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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1989

SWANCO INSURANCE COMPANY-ARIZONA,

Petitioner,

v.

WILLIAM D. HAGER,
Commissioner of Insurance of the State of Iowa,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether a state law eliminating licensing requirements for certain types of insurers which is passed during the pendency of an appeal relating to such licensing requirements must be taken into consideration by the appellate court.

2. Whether a state law requiring an insurance company to be licensed in the state prior to selling insurance in that state is preempted by a federal act that allows certain insurers to sell insurance in certain states without being licensed in those states.

PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS

The parties to the proceeding in the Court of Appeals were as follows:

Appellants
(now petitioners):

Swanco Insurance Company-Arizona

Appellees
(now respondents):

William D. Hager, Commissioner of Insurance of the State of Iowa

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v.

WILLIAM D. HAGER,
Commissioner of Insurance of the State of Iowa,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioner, Swanco Insurance Company-Arizona, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals entered in the above-entitled proceeding on August 23, 1989.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 879 F.2d 353 (8th Cir. 1989) and is reprinted at App. 1a of the appendix to this petition. The opinion of the District

Court is unreported but is reprinted at App. 1b of the appendix.

JURISDICTION

Swanco Insurance Company-Arizona petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case. The jurisdiction of the district court was invoked pursuant to 28 U.S.C. § 1331 since the case was a civil action arising under the laws of the United States.

The opinion of the Court of Appeals was entered on July 12, 1989. A petition for rehearing was timely filed and was denied on August 23, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

The relevant constitutional provision involved in this case is Article VI. The text of this article is reprinted at App. 1c of the appendix.

The relevant statutes involved in this case are the Product Liability Risk Retention Act of 1981, *as amended by* the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901-3906 (1982 and Supp. V. 1987) and Iowa Code § 515E.9. The text of the federal statute is reprinted at App. 1d of the appendix. The text of the state statute is reprinted at App. 1e of the appendix.

STATEMENT OF THE CASE

This lawsuit commenced when petitioners filed a complaint for declaratory, injunctive, and other relief on September 24, 1987. The jurisdiction of the district court was invoked pursuant to 28 U.S.C. § 1331 since the case was a civil action arising under the laws of the United States. Petitioner Swanco Insurance Company-Arizona (Swanco) provides, or seeks to provide, group liability insurance to several purchasing groups that have Iowa members. Swanco is an Arizona corporation, chartered and licensed as a property-casualty insurer, with its principal place of business located in Tucson, Arizona. Swanco has not been admitted or approved under Iowa law to issue insurance in Iowa.

By notice of hearing, dated July 22, 1987, respondent William D. Hager (Hager or the Commissioner) notified the petitioner that a hearing was set for September 8, 1987, to determine whether these insurers had acted in violation of the insurance laws of Iowa. Specifically, the notice alleges that petitioner had engaged in the unauthorized sale of insurance in the state of Iowa in violation of the Unauthorized Insurers' Act, Iowa Code § 507A (1987).

On September 4, 1987, petitioner filed a motion to dismiss for lack of subject matter jurisdiction on the ground that the Product Liability Risk Retention Act of 1981 *as amended by* the Liability Risk Retention Act of 1986, 15 U.S.C. §§ 3901-3906 (1982 and Supp. V. 1987) (the Act or the Risk Retention Act) preempted Hager's authority as Commissioner to apply the Iowa Unauthorized Insurers' Act to plaintiffs. The hearing set for September 8, 1987, was stayed indefinitely. Petitioner's motion was

denied by a hearing examiner on September 11, 1987. This lawsuit was commenced when petitioners filed a complaint for declaratory, injunctive, and other relief on September 24, 1987. This matter came before the district court upon a motion for summary judgment filed by the petitioner on March 17, 1988. Both parties consented to have the matter decided by a United States magistrate. Furthermore, both parties fully briefed the issues involved and a decision was rendered by Magistrate Ronald E. Longstaff on June 15, 1988.[1]

An appeal was filed by the petitioner, and the opinion of the Eighth Circuit Court of Appeals was issued on July 12, 1989. The petitioner filed a timely petition for rehearing, which was denied by the Eighth Circuit on August 23, 1989.

A. BACKGROUND

1. McCarran-Ferguson Act

In March of 1945 the United States Congress enacted 15 U.S.C. §§ 1011-1015, more commonly known as the "McCarran-Ferguson Act." The declaration of policy set out in Section 1011 of the Act states:

> The Congress hereby declares the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to

[1] Magistrate Longstaff did not issue a full opinion in this case but instead incorporated by reference his order in *Frontier Insurance Co. v. Hager*, No. 87-645-E (S.D. Iowa April 27, 1988), a case involving virtually identical facts and issues.

> the regulation or taxation of such business by the several States.

15 U.S.C. § 1011.

The McCarran-Ferguson Act further states:

> **(a) State regulation.** The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
>
> **(b) Federal regulation.** No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such act specifically relates to the business of insurance . . .

15 U.S.C. § 1012(a), (b).

The sections of the McCarran-Ferguson Act referenced above are meant to grant states exclusive jurisdiction over the "business of insurance" unless a federal statute specifically regulating the area is enacted. Therefore, if Congress enacts a statute relating to a specific area of the "business of insurance," a state law in conflict with that specific federal statute would be invalid. If Congress does not speak to a specific area of the "business of insurance," states retain their regulatory control, as they have since 1945.

2. Product Liability Risk Retention Act of 1981

The 1981 Product Liability Risk Retention Act was passed by Congress because of its belief that businesses were in many cases unable to procure product liability insurance at any price. H.R. Rep. No. 190, 97th Cong., 1st

Sess. 4 (1981), *reprinted in* 1981 U.S. Code Cong. & Admin. News 1432, 1432-33 ("H.R. Rep. No. 190"). The statute was designed, among other things, to reduce the cost and increase the availability of product liability insurance. H.R. Rep. No. 190 at 5-6. It also sought to relieve insurers of the burden of compliance with the varying and sometimes conflicting laws of many different states and the burden of dealing with multi-state product liability problems. *Id.* at 6.

The 1981 Act provided for the formation of two types of groups: risk retention groups and purchasing groups. A "risk retention group" is an insurance cooperative formed by various businesses to assume and spread all or any portion of the product liability exposure. 15 U.S.C. §§ 3901(a)(4), 3902; H.R. Rep. No. 190 at 7. A "purchasing group" allows businesses to purchase product liability insurance on a group basis. 15 U.S.C. §§ 3901(a)(5), 3903; H.R. Rep. No. 190 at 7.

3. Liability Risk Retention Act of 1986

The Liability Risk Retention Act of 1986 came as a response to an insurance crisis that was "far more severe than those previously experienced." H.R. Rep. No. 865, 99th Cong., 2nd Sess. 1, 8 *reprinted in* 1986 U.S. Code Cong. & Admin. News, 5303, 5304 ("H.R. Rep. No. 865"). While the 1981 Act preempted certain state laws and regulations that intended to prohibit the formation of product liability risk retention groups and purchasing groups, the 1986 Act's legislative history states that the purpose of the amendment was to expand "the scope of

the preemption to enable risk retention groups and purchasing groups to provide not only product liability insurance, but all types of liability insurance as defined in the bill." *Id.* at 7.

In addition to extending the Act's application to other commercial enterprises with similar risks, the 1986 Act "augments the authority to nonchartering states to regulate solvency, trade practices, and other matters. The bill contains other provisions intended to insure that risk retention groups and purchasing groups are appropriately supervised by the regulatory authorities." *Id.* Therefore, while extending types of liability coverage available to risk retention and purchasing groups, the 1986 Act augmented a nonchartering state's powers.

4. Difference Between Risk Retention Groups and Purchasing Groups

As stated above, the Act provides for the formation of risk retention groups [15 U.S.C. § 3901(a)(4)] and purchasing groups [15 U.S.C. § 3901(a)(5)]. A risk retention group is an insurance provider. A purchasing group is in the business of buying insurance for its similarly situated group members. These risk retention groups and purchasing groups are legal entities, consisting of corporations or other limited liability associations. Under the Act, a risk retention group must be chartered or licensed by one state prior to operating in all states as a group. 15 U.S.C. § 3901(a)(4)(c). A purchasing group is not subject to any chartering requirements as they are not providers of insurance and solvency and other similar requirements are therefore inapplicable. However, a purchasing group

must be domiciled in a state, any state, and must notify any nondomiciliary state of its intention to do business in that state. 15 U.S.C. § 3901(a)(5) and 15 U.S.C. § 3903(d).

5. Recently Enacted Iowa Law

On July 1, 1988, a state law version of the Risk Retention Act took effect.[2] This law was based on model legislation as promulgated by the National Association of Insurance Commissioners and was passed by the Iowa Legislature in the spring of 1988.[3] The new Iowa law provides a means by which purchasing groups may obtain liability insurance from an insurer not admitted or licensed in the state of Iowa. The Eighth Circuit declined to review the effect of this new statute since it was raised for the first time on appeal.

REASONS FOR GRANTING THE WRIT

A. THE EIGHTH CIRCUIT COURT OF APPEALS' REFUSAL TO ADDRESS THE APPLICABILITY OF A STATE LAW ELIMINATING LICENSING REQUIREMENTS FOR CERTAIN TYPES OF INSURERS WHICH WAS ENACTED DURING THE PENDENCY OF AN APPEAL RELATING TO SUCH LICENSING REQUIREMENTS IS CONTRARY TO PREVIOUS DECISIONS OF THIS COURT.

In *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 102, 110 (1801), Chief Justice Marshall said:

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[2] Iowa Code § 515E.9

[3] Legislation based on this National Association of Insurance Commissioners model has been passed by 38 states. *N.J. Agents Call for RRG, PG Regs*, National Underwriter, Nov. 6, 1989 at 60.

> It is, in the general, true, that the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if, subsequent to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed . . .

In other words, when an appellate court reviews a decision of a district court, they must look to the statute as it presently reads, not as it read when the district court rendered its decision. *Fusari v. Steinberg*, 419 U.S. 379, 387 (1975). *See also, James v. Ball*, 613 F.2d 180, 181 n. 1 (9th Cir. 1980) (dealing with an appellate court interpretation of state law as modified subsequent to the district court decision).

This matter came before the United States Court of Appeals for the Eighth Circuit as an appeal to an order rendered on June 15, 1988, by the United States District Court for the Southern District of Iowa. On July 1, 1988, a state law version of the Risk Retention Act took effect. In its appellate brief, Swanco argued that this change in the Iowa statutory law nullified the state licensure law at issue and asked that the Court overturn the district court's ruling. The Court of Appeals declined "to address this issue since it is raised for the first time on appeal." *Swanco Ins. Co. v. Hager*, 879 F.2d 353, 359 n. 11 (8th Cir. 1989), reprinted at App. 1a, 14a of the appendix to this petition. However, because the state licensure law changed prior to the decision of the appellate court, the court was obligated to look at the statute as it currently read, not as it read when the district court rendered its decision. *Fusari* and *James, supra*.

The new Iowa law provides means by which purchasing groups may obtain liability insurance from an insurer not admitted in the state. Iowa Code § 515E.9 states in part:

> A purchasing group shall not purchase insurance from a risk retention group or from an insurer unless one or more of the following conditions apply:
>
> 1. . . .
>
> 2. . . .
>
> 3. . . .
>
> 4. *A purchasing group which obtains liability insurance from an insurer not admitted in this state* or a risk retention group shall inform each of the members of the group, which have a risk resident or located in this state, that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and regulations of this state. (Emphasis added.)

In analyzing this language, it should be noted that a fundamental canon of statutory construction is that all words are interpreted as taking their common, contemporary, and ordinary meaning. *Perrin v. United States*, 444 U.S. 37, 40 (1979). In adopting this new law [Iowa Code § 515E.9(4)], the Iowa legislature set up a disclosure requirement that must be met by a purchasing group *when* it obtains insurance from an "insurer not admitted" in Iowa. This language, when taken at its ordinary and common meaning, includes a company such as Swanco

which may now insure purchasing groups with Iowa members even though it is "not admitted" in Iowa.[4]

In its opinion, the Court of Appeals identified the question raised on appeal as "whether, consistent with the Act, the State of Iowa may require an insurance company providing coverage to a purchasing group domiciled in another state but having members in Iowa to be licensed in Iowa." *Swanco, supra* at 354, App. 2a. With the enactment of Iowa Code § 515E.9 it is apparent that, consistent with the federal act and with current Iowa law, the state may *not* require an insurance company in such an instance to be licensed in Iowa.[5] Therefore, because of

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[4] This same statutory construction approach can be utilized to counter the Commissioner's presumed argument that the words "insurer not admitted" in Iowa refer to an excess and surplus lines carrier. If in fact the Iowa legislature had intended to refer to excess and surplus lines carriers, they would have used such precise language. However, the common interpretation of the language as written includes companies such as Swanco and allows them to insure purchasing groups with Iowa members.

[5] As we have previously discussed, the Court of Appeals held that the Act itself does not require that a company be licensed in Iowa in order to sell insurance to a purchasing group with Iowa members. *Swanco, supra* at 356, App. 5a-7a. Furthermore, our prior analysis indicates that Iowa law as modified also contains no such licensing requirements. Therefore, if Commissioner Hager seeks to invoke the licensing requirement, he will be in violation of both federal and state law. The fact that he is in violation of federal law allows the Court to grant relief against him despite the 11th Amendment to the United States Constitution. *See Corey v. White*, 457 U.S. 85, 89 (1982), *citing Worcester County Trust Co. v. Riley*, 302 U.S. 292, 297 (1937).

the change in the law, the Court of Appeals was obligated to apply the revised statute and either reverse the decision of the lower court or remand the case for further review.

In light of the foregoing, petitioner respectfully requests that the Court grant this petition for writ of certiorari to review this matter and to bring the Court of Appeals' decision into conformity with prior decisions of this Court.

B. THE HOLDING OF THE EIGHTH CIRCUIT COURT OF APPEALS THAT A STATE LAW REQUIRING AN INSURANCE COMPANY TO BE LICENSED IN A STATE PRIOR TO SELLING INSURANCE IN THAT STATE IS NOT PREEMPTED BY A FEDERAL ACT THAT ALLOWS CERTAIN INSURERS TO SELL INSURANCE IN CERTAIN STATES WITHOUT BEING LICENSED IS CONTRARY TO THE DECISIONS OF THIS COURT AND OBSTRUCTS THE CONGRESSIONAL GOAL OF FACILITATING SALES IN A ONE-HALF BILLION DOLLAR SEGMENT OF THE INSURANCE INDUSTRY.

In this case, Swanco is asserting, *inter alia*, that Iowa's insurance licensing law is preempted by the Risk Retention Act based on the language and structure of the Act as well as the intent delineated by Congress. However, before we delve into an analysis of the preemption doctrine, it is essential that this Court understand the nature of insurance licensure and the practical ramifications of the Court of Appeals' decision on this area.

Licensure is the foundation of insurance regulation. Maintaining financial solvency of insurance companies and protecting consumers are two primary goals of an insurance commissioner, and licensure is one of the tools that a commissioner uses to achieve these goals. Ultimately, an insurance commissioner's "power" over an insurance company's right to do business in a certain state provides the basis for a commissioner to examine the company's financial records, punish it for fraudulent advertising, and perform a myriad of other regulatory and administrative tasks.

Obtaining a license to sell insurance in a state is normally a time-consuming and expensive proposal. For this reason, each license a company possesses is worth a significant amount of money. When a company is sold, a license in a state such as New York or California can be worth a million dollars or more because of the time and expense involved in getting admitted as well as the intrinsic value of a license in these highly populated states.

As we have previously mentioned, the mid-1980s was a tough period for insurance purchasers. Prices rose dramatically and insurance was not available in many instances. Directors of corporations resigned because they could not purchase directors' and officers' coverage.[3] Municipal parks and swimming pools were actually closed because of the unavailability of insurance. Furthermore, many professionals and small business people found they could not obtain insurance or could not afford it if it was available.

In response to this "insurance crisis," Congress passed the 1986 amendments to the Risk Retention Act. These amendments expanded the 1981 Act to allow the sale of all types of liability insurance.

One of Congress' primary goals was to "facilitate the formation and operation of purchasing groups," H.R. Rep. No. 865 at 7, so that consumers could band together and purchase liability insurance on a group basis, thereby spreading the risk and utilizing economies of scale. These purchasing groups would be used as a tool to make insurance more available and more affordable. *Id.* at 8. In an effort to achieve this goal, Congress inserted section 3903(f) of the Act.[6] The Commissioner contended that a purchasing group is "located" wherever the group has members and that section 3903(f) required that an insurer providing coverage to a purchasing group be licensed in each state where the group has members. Swanco contended that section 3903(f) required that an insurer be licensed only in its state of domicile. In its review of the case, the Court of Appeals correctly concluded that section 3903(f) requires that the insurer be licensed only in the purchasing group's state of domicile. *Swanco, supra,* at 356, App. 5a-7a.

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[6] 15 U.S.C. § 3903(f), which provides in part, "a purchasing group may not purchase insurance . . . from an insurer not admitted in the State in which the purchasing group is *located,* unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State." (Emphasis added.)

The question remains whether Congress intended to exempt insurers and purchasing groups from the licensing and regulatory laws of nondomiciliary states. Swanco submits that Congress has preempted nondomiciliary states from regulating insurers of purchasing groups by the language, structure, and goal of the Act. Such preemption is necessary to ensure that Congress' goal is met. We begin our analysis of the preemption area with a review of the "supremacy clause" of the Constitution.

Article VI of the Constitution of the United States of America provides in pertinent part as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The supremacy clause gives rise to the preemption doctrine in cases where there is a conflict between state and federal law.

In preemption cases, the court starts with the assumption that the powers of the states are not to be superseded by a federal act unless that was the clear and manifest purpose of Congress, *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Preemption can also occur when there is an outright conflict between federal and state law, *Free v. Bland*, 369 U.S. 663, 666 (1962), where Congress has legislated comprehensively, thus occupying an entire field of regulation, leaving no room for the states to supplement federal law, *Rice v. Santa Fe Elevator Corp.*, 331

U.S. 218, 230 (1947), or where state law stands as an obstacle to the accomplishment of execution of the full objectives of Congress, *Chicago & Northwestern Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981).

In the case at bar, the Court of Appeals' finding that the Act does not preempt nondomiciliary states from regulating insurers of purchasing groups is at odds with the prior findings of this Court. Furthermore, the Court of Appeals' decision severely hinders the operation of a major portion of the Act, and in doing so, obstructs the goal as set out by Congress.

The Court of Appeals correctly held that section 3903(f) of the Act requires that an insurer be licensed only in the purchasing group's state of domicile. Since the language of section 3903(f) is in direct conflict with the licensing requirements of Iowa, federal law must prevail.[7] *Free v. Bland, supra.* Furthermore, our analysis below makes it clear that the state licensing law stands as an obstacle to the Risk Retention Act and its goals. Therefore, preemption should occur. *Chicago & Northwestern Transp. Co. v. Kalo Brick & Tile Co., supra.*

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[7] Petitioner submits that finding preemption is easier in cases such as this where both the state and federal law deal with the business of insurance. This is because the McCarran-Ferguson Act, which gives states the authority to regulate insurance, is inapplicable by its own terms when a conflicting federal law deals with the "business of insurance." Therefore, the federal law should prevail. *See* 15 U.S.C. § 1012(a), (b); *Hanover Ins. Co. v. C.I.R.*, 588 F.2d 1211, 1218 (1st Cir. 1979); *see also, Bernstein v. Centaur Ins. Co.*, 606 F. Supp. 98, 101 (S.D.N.Y. 1984).

In reviewing the district court's opinion, the Court of Appeals seeks to "determine whether Congress plainly has demonstrated its intent that Section 4(f) [now 15 U.S.C. § 3903(f)] should have preemptive effect." *Swanco, supra,* at 357, App. 9a. In their analysis of that issue, they spent a great deal of time looking at the legislative history of the Act without ever taking a step back and looking at the practical reality of nondomiciliary licensing requirements.[8] If the state licensing law is not preempted, a primary goal of the Act will be thwarted and a major segment of the insurance industry will be harmed. Congress clearly did not want this to be the case.

In 1988, 337 purchasing groups took in estimated premiums of 575.1 million dollars. Cutts, *Survey of 337 Purchasing Groups Reveals 76% are Active and 1988 Estimated Premium Exceeds One-Half Billion Dollars,* Risk Retention Rep., July 15, 1989, at 6, 7. Furthermore, 315,000 insureds obtained coverage through purchasing groups. *Id.* A list of these purchasing groups is found at *Risk Retention Pulse Points: Purchasing Groups,* Risk Retention Rep., Nov. 15, 1989, 7-18, reprinted at App. 1f. A review of this list shows the wide variety of consumers using purchasing groups to obtain various forms of insurance. If the Court of Appeals' decision is allowed to stand, any

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[8] In their analysis, the Court of Appeals glosses over the burden presented to purchasing group insurers by multi-state licensing laws. Footnote 10 of the opinion indicates the Court's position that a nondomiciliary state's licensing law is no more of a "burden" to a purchasing group insurer than it is to any other insurer. *Swanco, supra,* at 359, n. 10, App. 13a. While that may be true in theory, it must be remembered that the purpose of the Act is to remove such "burdens" to facilitate the formation and operation of purchasing groups to alleviate the insurance crisis.

of these purchasers buying insurance from a company that is not licensed in their state may suddenly find themselves without coverage. For example, the National Association of Emergency Medical Technicians, Inc., Purchasing Group is based in Arizona and has registered as a purchasing group in California, Colorado, Delaware, Tennessee, and Texas, App. 25f. The purchasing group provides all forms of liability coverage to its members, including professional malpractice coverage, App. 25f; *Best's Insurance Reports – Property-Casualty* 374 (1989). They are currently purchasing insurance from AzStar Insurance Company (AzStar), a company domiciled in Arizona and licensed as an excess and surplus lines carrier in numerous states, App. 25f; *Best's, supra*. However, AzStar is not licensed in either Delaware or Tennessee, *Best's, supra*. Therefore, if the Court of Appeals' decision is not reversed, AzStar will no longer be able to sell insurance to purchasing group members in Delaware or Tennessee. Furthermore, it is questionable whether the members left without coverage will be able to obtain coverage elsewhere. If insurers writing professional malpractice insurance existed in great numbers, there would not have been an availability crisis in the first place. This point cannot be overemphasized – if widely licensed companies selling unique forms of insurance at a reasonable price were readily available, the insurance crisis would not have developed and the Act would not have been necessary. Interpreting the Act to require non-domiciliary state licensure severely thwarts Congress' intent to facilitate the operation of purchasing groups and to increase the availability and affordability of insurance.

Since Congress' goal is obstructed, the state licensure law must be preempted.

Swanco has shown that this is a matter of utmost importance to the insurance industry and to society as a whole. They have also shown that the Court of Appeals' decision is contrary to the decisions of this Court. In light of this, petitioner respectfully requests that the Court grant this petition for writ of certiorari to review this important matter and to bring the Court of Appeals' decision into conformity with prior decisions of this Court.

CONCLUSION

For all of the foregoing reasons, this petition for writ of certiorari should be granted. Petitioner reiterates that the Eighth Circuit Court of Appeals acted contrary to the decisions of this Court by failing to consider the effect of a law passed during the pendency of an appeal. Further, the Court of Appeals erred by not finding that a federal act will preempt state law when the state law obstructs Congress' goal and is contrary to decisions of this Court. Therefore, this petition for writ of certiorari should be granted.

Respectfully submitted,

DREHER, WILSON, SIMPSON,
JENSEN, SELLERS, BUTTERS,
ADAMS & KAISER, P.C.

By: John C. Schachterle
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APPENDICES

A. Order and Judgment of the Eighth Circuit Court of Appeals

B. Order of the United States District Court for the Southern District of Iowa, Central Division

C. Article VI of the United States Constitution

D. The Risk Retention Act, 15 U.S.C. §§ 3901-3906 (1987 Supp.)

E. Iowa Code § 515E.9

F. List of Purchasing Groups from the *Risk Retention Reporter*

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 88-2113

Swanco Insurance Company - Arizona, Appellant, v. William D. Hager, Commissioner of Insurance of the State of Iowa, Appellee.	* * * * * * * * * * *	Appeal from the United States District Court for the Southern District of Iowa.

Submitted: December 12, 1988
Filed: July 12, 1989

Before BOWMAN and MAGILL, Circuit Judge, and BATTEY, District Judge.*

BOWMAN, Circuit Judge.

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* The HONORABLE RICHARD H. BATTEY, United States District Judge for the District of South Dakota, sitting by designation.

This appeal involves the Product Liability Risk Retention Act of 1981 *as amended by* the Liability Risk Retention Act of 1986, 15 U.S.C. §§ 3901-3906 (1982 & Supp. V 1987) (the Act), which authorizes persons and businesses with similar or related liability exposure to form "purchasing groups" for the purpose of purchasing liability insurance on a group basis and "risk retention groups" for the purpose of self insurance. 15 U.S.C. § 3901(a)(4), (5). Because some states' laws make purchasing groups and risk retention groups illegal, the Act contains express provisions that preempt such laws. This appeal raises the question of whether, consistent with the Act, the State of Iowa may require an insurance company providing coverage to a purchasing group domiciled in another state but having members in Iowa to be licensed in Iowa.

I.

In 1981, Congress enacted the Product Liability Risk Retention Act, Pub. L. No. 97-45, 95 Stat. 949 (1981) (1981 Act). The 1981 Act was Congress's response to the problems businesses had encountered in obtaining product liability coverage. Premiums had increased dramatically, and some businesses reportedly were unable to obtain coverage at any price. The 1981 Act attempted to redress the crisis by allowing businesses to purchase insurance at more favorable rates either by forming self-insurance pools called risk retention groups or by forming purchasing groups, which purchase group insurance from an existing insurer. Congress intended to reduce the cost and increase the availability of product liability insurance and

to preempt certain state laws that prohibited or hindered the formation of these groups.

The 1981 Act was amended by the Liability Risk Retention Act of 1986, Pub. L. No. 99-563, 100 Stat. 3177 (1986), to expand the scope of the preemption to enable risk retention and purchasing groups to provide not only product liability insurance but all types of liability insurance. The 1986 Amendments also include provisions dealing with the permissible scope of state regulation of risk retention and purchasing groups.

This case involves the Ugly Duckling Rent-A-Car System, Inc. Risk Purchasing Group, which is domiciled in Arizona, and has members in Iowa. Appellant Swanco Insurance Company (Swanco) is a corporation chartered and licensed in Arizona as a property casualty insurer, with its principal place of business in Tucson. Swanco, which is not licensed under Iowa law to issue insurance in Iowa, insures the Ugly Duckling Purchasing Group.

On July 22, 1987, appellee William D. Hager, Commissioner of Insurance for the State of Iowa, scheduled a hearing to determine whether Swanco was in violation of the Iowa Unauthorized Insurers Act for providing coverage to a purchasing group with members in Iowa. Swanco moved to dismiss the proceeding on the ground that the Act preempts application of the Iowa statute to Swanco, in that the Act required Swanco to be licensed only in the state where the purchasing group is domiciled. After a hearing examiner denied Swanco's motion, Swanco filed a complaint in the District Court seeking declaratory and injunctive relief.

On cross-motions for summary judgment, the magistrate[1] granted summary judgment in favor of the Commissioner on the ground that the Act does not preempt the Commissioner's authority to require an insurer providing coverage to purchasing group members in Iowa to comply with Iowa's licensing laws.[2]

Swanco appeals the magistrate's decision, contending that the plain meaning of the term "located" in section 4(f),[3] as well as the legislative history of that section, make it clear that a purchasing group is "located" in only one state, namely the state in which the group is domiciled. Swanco further argues that the Act as so construed preempts Iowa from requiring Swanco to be licensed in Iowa. Although we conclude that Swanco's reading of "located" in section 4(f) is correct, we nevertheless conclude that neither section 4(f) nor any other provision of the Act preempts states from applying licensing requirements that do not directly conflict with the express preemption provisions in section 4(a). Accordingly, we affirm.

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[1] The parties consented pursuant to 28 U.S.C. § 636(c) to proceed before the Honorable Ronald E. Longstaff, United States Magistrate for the Southern District of Iowa.

[2] Magistrate Longstaff did not issue a full opinion in this case, but instead incorporated by reference his order in *Frontier Insurance Co. v. Hager*, No. 87-645-E (S.D. Iowa April 27, 1988), a case involving virtually identical facts and issues.

[3] 15 U.S.C. § 3903(f), which provides in part: "A purchasing group may not purchase insurance . . . from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State."

II.

We consider first the meaning to be given to the phrase "the State in which the purchasing group is located," in section 4(f) of the Act, the pertinent part of which is set forth in the margin of this opinion at footnote 3.

The Commissioner contends that a purchasing group is "located" wherever the group has members, and therefore section 4(f) requires an insurer providing coverage to a purchasing group to be licensed (or an eligible surplus lines carrier)[4] in each state where the group has members. Swanco contends that section 4(f) requires the insurer to be licensed only in its state of domicile.

Based upon our reading of the Act, we conclude that Swanco's position is correct. We think it is significant that section 4(f) uses the term "the State" in the singular. It does not refer to "the States" or to "every State" in which the purchasing group is located, nor does it refer to "a State," a form which could be construed to mean multiple states. Furthermore, section 4(f) refers only to the location of "the purchasing group," and not the location of its "members." Other sections of the Act refer separately to

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[4] Most states allow insurers meeting certain capital requirements to do business as a surplus line carrier. A surplus line carrier is required to file, among other things, a financial statement with the state's commissioner. The process of gaining authority to do business as a surplus line carrier is more expeditious than the process of becoming fully licensed, and normally does not involve the review of rates. A surplus line carrier is not considered to be an admitted insurer, but rather does business with the approval of the commissioner.

"the purchasing group," "members of the group," and "its members," *see* 15 U.S.C. § 3903(a), (b), demonstrating a clearly drawn distinction between the purchasing group and its members. We therefore conclude that "the purchasing group" language of section 4(f) is not to be read as encompassing members of the group.

This conclusion – that section 4(f) refers to a single state – requires us to identify that state or, more precisely, to determine the statutory test for identifying the "state in which the purchasing group is located." Basing the state of location on the group's highest premium volume, or where the most members reside, or the state which has the greatest interest in the purchasing group's activities, would be problematic because these factors may not be easily ascertainable and may change over time. That is not to say that Congress could not have decided to base "location" on one of these factors. We do not believe, however, that Congress intended to do so, for it chose to gear other sections of the Act to the purchasing group's domicile. *See* 15 U.S.C. § 3901(a) (5) (D) (requiring that a purchasing group be domiciled in a state); 15 U.S.C. § 3903(d) (1) (A) (requiring a purchasing group to give notice of the group's state of domicile to a state in which it plans to do business). Further, the Act allows risk retention groups to declare the state in which the group will be chartered. *See* 15 U.S.C. § 3901(a) (4) (C) (i). Though the statute is not a model of clarity, we conclude that the state of location referred to in section 4(f) is the state in which the purchasing group is domiciled. Since in the present case the purchasing group is domiciled in Arizona, section 4(f) requires the insurer (Swanco) to be admitted only in Arizona, not in all the various states,

including Iowa, in which the purchasing group has members. Accordingly, we reject the Commissioner's argument that section 4(f) requires insurers to be licensed in every state in which a group has members.

III.

Our conclusion that section 4(f) requires the insurer to be licensed (or an eligible surplus lines carrier) in only the purchasing group's state of domicile does not end our analysis. The question remains whether Congress intended to exempt insurers of purchasing groups from the licensing and regulatory laws of nondomiciliary states. The Commissioner contends that under the reading of the Act that we have adopted in Part II of this opinion, section 4(f) should be viewed as a minimum federal requirement leaving nondomiciliary states free to enforce their licensing laws and regulations to the extent they are not inconsistent with the Act. Swanco counters that Congress, by enacting section 4(f), has preempted nondomiciliary states from regulating insurers of purchasing groups.

Preemption occurs when Congress, in enacting a statute, expresses a clear and manifest intent to preempt state law, *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); when there is an outright conflict between the federal law and state law, *Free v. Bland*, 369 U.S. 663, 666 (1962); where Congress has legislated comprehensively, thus occupying the field so as to leave no room for the states to supplement federal law, *Rice v. Sante Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); or where state law stands as an obstacle to the execution of the federal law passed by

Congress, *Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981). We begin our analysis with the well-established presumption against imputing to Congress an intention to preempt an area that traditionally has been left to state regulation. *See Wisconsin Educ. Ass'n Ins. Trust v. Iowa State Bd. of Pub. Instruction*, 804 F.2d 1059, 1064 (8th Cir. 1986) (citing *Jones v. Rath Packing Co.*, 430 U.S. at 525).[5]

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[5] In *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944), the Supreme Court held that insurance was commerce and therefore subject to the federal antitrust laws. In response to *South-Eastern*, Congress in 1945 passed the McCarran-Ferguson Act, which largely exempts the business of insurance from the federal antitrust laws and states in part:

> Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

15 U.S.C. § 1011. The McCarran-Ferguson Act further provides:

> (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
>
> (b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance. . . .

15 U.S.C. § 1012(a), (b).

It is undisputed that insurance is an area that traditionally has been left to state regulation. It also is undisputed that Congress intended the Act to preempt certain state laws that prohibited or hindered the formation of purchasing groups. The question then is whether the Iowa law requiring Swanco to be licensed in Iowa is preempted by section 4(f). In other words, does the Act overcome the presumption against preemption? Our task is to determine whether Congress plainly has demonstrated its intent that section 4(f) should have preemptive effect. To make this determination, we must look to the language and structure of the Act.

The Act creates two distinct alternatives, self-insurance by risk retention groups and group purchase of insurance by purchasing groups. Congress considered but rejected the creation of a comprehensive federal regulatory scheme for purchasing and risk retention groups. *See* H.R. Rep. No. 190, 97th Cong., 1st Sess. 6-7, *reprinted in* 1981 U.S. Code Cong. & Admin. News 1432, 1435; *see also Home Warranty Corp. v. Caldwell*, 777 F.2d 1455, 1471-72 (11th Cir. 1985), *cert. denied*, 479 U.S. 852 (1986). Instead, Congress created separate and distinct preemption schemes for the two groups. "These carefully drafted provisions were designed to provide a 'workable legal framework' balancing the traditional authority of the states and the need for purchasing groups to ameliorate the liability insurance crisis." *Insurance Co. of State of Pennsylvania v. Corcoran*, 850 F.2d 88, 91 (2d Cir. 1988) (citing H.R. Rep. No. 865, 99th Cong., 1st Sess. at 21).

Section 3 of the Act allows groups with similar types of risk to form and own their own insurance company to insure against their liability exposures. The risk retention

group is chartered in the group's state of domicile and this state is primarily responsible for the group's regulation. *See* 15 U.S.C. § 3902(a) (1). The authority of nondomiciliary states is largely preempted. Section 3(a) (1) preempts "any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would – make unlawful, or *regulate*, directly or indirectly, the operation of a risk retention group." (emphasis added). The Act specifically enumerates the exceptions to this broad preemption. *See* 15 U.S.C. § 3902(a) (1) (A)-(I) (among the powers reserved to nondomiciliary states are the authority to tax business written in the nondomiciliary state, to require compliance with the nondomiciliary state's unfair claims and deceptive trade practices laws, and to require policies issued by risk retention groups to give notice that the nondomiciliary state's insurance laws and state guarantee funds might not apply). Thus, aside from the specific powers reserved to nonchartering states, the Act prohibits those states from regulating risk retention groups.[6]

The Act's approach to purchasing groups is quite different. Unlike section 3, which broadly preempts state law while enumerating specific laws that the state may enforce, section 4 expressly preempts only a limited

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[6] *See Home Warranty Corp. v. Caldwell*, 777 F.2d 1455, 1471 (11th Cir. 1985) (risk retention groups are exempted from state regulation of insurance companies because they are not in the business of selling insurance to the public.).

number of specific state laws.[7] Nothing in the 1986 Amendments, which expanded the applicability of the 1981 Act to all forms of liability insurance, undermines

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[7] Section 4(a) preempts:

> any state law, rule, regulation, or order to the extent that such law, rule, regulation, or order would –
>
> (1) prohibit the establishment of a purchasing group;
>
> (2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;
>
> (3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;
>
> (4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;
>
> (5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal forum;
>
> (6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;
>
> (7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or
>
> (8) otherwise discriminate against a purchasing group or any of its members.

15 U.S.C. § 3903(a).

the preemption structure developed by the 1981 Act.[8] The statutory meaning is clearly manifested in section 4(g), which states: "[n]othing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter." 15 U.S.C. § 3903(g).

The language and structure of the Act thus strongly support the Commissioner's position that section 4(f) does not preempt a nondomiciliary state from imposing its licensing requirements upon insurers who wish to sell to purchasing group members in that state.

Swanco maintains that Congress intended to free purchasing groups and their insurers from multiple and inconsistent state regulations, and that allowing states to enforce their licensing laws defeats the purpose of the

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[8] This conclusion, which is based upon our reading of the plain language of the 1981 Act and the 1986 Amendments, is fully supported by the House Report on the 1986 Amendments. As the House Report states:

> In enacting the 1981 Act, it was recognized that there were a number of identifiable kinds of State laws that prevented the establishment and functioning of purchasing groups. Those laws were listed in Section 4(a) of the 1981 Act and it is those laws that are preempted. Subject to the prohibition on discrimination against purchasing groups, the states remained able to apply all their other laws to purchasing groups and *those dealing with such groups*. This approach is carried forward into the 1986 Act. Therefore, the Committee did not consider it necessary to itemize all the other laws to which purchasing groups remain subject.

H.R. Rep. No. 865, 99th Cong., 2d Sess. at 19 (emphasis added).

Act.[9] Although Swanco may be correct in stating that total preemption of nondomiciliary state regulation would enhance the ability of purchasing groups to operate, our reading of the statute does not permit us to accept Swanco's conclusion that the Act must be given a broad preemptive effect. Section 4(a) specifically preempts certain state laws. Except for those explicitly preempted laws, the Act leaves the states free to apply their laws in a nondiscriminatory manner.[10] Instead of total

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[9] We note that the Secretary of Commerce has interpreted section 4(f) as preempting nondomiciliary states from regulating insurers of purchasing groups. *See* U.S. Dep't of Commerce, *Liability Risk Retention Act of 1986: Implementation Report*, Sept. 1987. We recognize that an agency's interpretation of a statute it is charged to administer is to be given deference. However, such deference is not warranted here. The Commerce Department is not charged with administering the Act, but merely has responsibility under the Act to report on its implementation. In any event, the Secretary's interpretation of section 4(f) is based on the Secretary's reading of the Act and legislative history, an exercise the Supreme Court has called a "quintessential judicial function." *Bureau of Alcohol, Tobacco and Firearms v. Federal Labor Relations Auth.*, 464 U.S. 89, 98 n.8 (1983). Although the agency's interpretation may be influential, it cannot bind this Court. "Reviewing courts cannot, in any case, be bound by a statutory interpretation they believe to be an aberration of Congress' intent. . . . The Secretary's interpretation of [Section 4(f)] is exactly such an interpretation. It cannot stand in the light of our examination of the language and legislative history of the Act. . . ." *Hall v. Lyng*, 828 F.2d 428, 435 (8th Cir. 1987).

[10] Allowing nondomiciliary states to enforce their licensing and regulatory laws not preempted by section 4(a) burdens an insurer of a purchasing group no more than any other insurer desiring to market its policies in several states.

preemption, Congress "selected particularized means to [an] end in-conscious recognition that a considerable area of state regulation would remain intact." *Corcoran*, 850 F.2d at 93 (rejecting insurer's argument that Congress intended wholesale preemption for purchasing groups). Swanco's position is at odds with the statutory scheme and thus cannot prevail.[11]

IV.

In conclusion, we affirm the magistrate's grant of summary judgment in favor of the Commissioner on the ground that Iowa is not preempted under the Act from requiring Swanco to comply with Iowa's licensing requirements.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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[11] Swanco also argues that Section 515E.9 of the Iowa Insurance Code, Iowa Code Ann. § 515E.9 (West Supp. 1989), which was enacted during the pendency of this appeal, undermines the Commissioner's position. We decline to address this issue since it is raised for the first time on appeal. Because it involves the interpretation of state law, it is especially appropriate that it be addressed initially at the trial court level.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED INTERNATIONAL INSURANCE COMPANY OF WARWICK, R.I., et al.,	)	CIVIL NO. 87-707-E
Plaintiffs,	)	ORDER
vs.	)	
WILLIAM D. HAGER, Commissioner of Insurance of the State of Iowa,	)	
Defendant.	)	

This matter came before the Court upon the Motion for Summary Judgment filed by plaintiffs, United International Insurance Company of Warwick, R.I., Swanco Insurance Company – Arizona, and Fund Insurance Company, Ltd., on March 17, 1988. Defendants, William D. Hager, Commissioner of Insurance of the State of Iowa, and the Insurance Department of the Department of Commerce of the State of Iowa, filed a Resistance to Plaintiff's Motion for Summary Judgment and a Cross-Motion for Summary Judgment[1] on March 22, 1988. Plaintiffs filed a Reply Brief in Support of Motion for Summary

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[1] Defendants failed to file a formal Cross-Motion for Summary Judgment. The Court will, however, accept defendants' Memorandum in Support of Defendants' Resistance to Motion for Summary Judgment and Cross-Motion for Summary Judgment as an adequate substitute.

Judgment on April 18, 1988. Defendants filed a Reply Memorandum to Plaintiffs' Resistance to Defendants' Cross-Motion for Summary Judgment on May 4, 1988.

The parties consented to proceed before the undersigned United States Magistrate pursuant to 28 U.S.C. § 636(a) on May 3, 1988, and this lawsuit was referred on that same date. On May 11, 1988, plaintiff United International Insurance Company of Warwick, R.I., voluntarily dismissed without prejudice its cause of action in the above-captioned lawsuit. With regard to the remaining parties, the matters raised in plaintiffs' and defendants' motions are fully submitted to this Court.

I. *FACTUAL DISCUSSION*

This lawsuit commenced when plaintiffs filed a complaint for declaratory, injunctive, and other relief on September 24, 1987. Plaintiffs, Swanco Insurance Company – Arizona (Swanco) and Fund Insurance Company, Ltd. (FIC), provide group liability insurance to several purchasing groups that have Iowa members. Swanco is an Arizona Corporation, chartered and licensed as a property-casualty insurer, with its principal place of business located in Tucson, Arizona. FIC is a Bermuda Corporation, chartered and licensed as a property-casualty insurer, with its principal place of business located in Hamilton, Bermuda. Neither Swanco nor FIC is admitted or approved under Iowa law to issue insurance in Iowa.

By Notice of Hearing, dated July 22, 1987, defendant William D. Hager (Hager) notified plaintiffs that a hearing was set for September 8, 1987, to determine whether these insurers had acted in violation of the insurance

laws of Iowa. Specifically, the notice alleges that plaintiffs had engaged in the unauthorized sale of insurance in the state of Iowa in violation of the Unauthorized Insurers Act, Iowa Code § 507A (1987).

On September 4, 1987, plaintiffs filed a Joint Motion to Dismiss for Lack of Subject Matter Jurisdiction on the ground that the Liability Risk Retention Act, 15 U.S.C. § 3901 et al., preempted Hager's authority as Commissioner to apply the Iowa Unauthorized Insurers Act to plaintiffs. The hearing set for September 8, 1987, was stayed indefinitely. Plaintiffs' motion was denied by the hearing examiner on September 11, 1987. Plaintiffs were provided until October 14, 1987, to appeal the examiner's decision to Commissioner Hager. Believing that Hager would sustain the ruling, plaintiffs filed this lawsuit rather than exhausting their administrative remedies.

II. *DISCUSSION OF APPLICABLE LAW*

On April 27, 1988, this Court entered an Order in *Frontier Insurance Company, Inc. v. Hager*, Civ. No. 87-645-E. Based on facts and issues virtually identical[2] to those in this lawsuit, an insurance company providing group liability insurance to purchasing groups which have Iowa members brought a declaratory action against Commissioner Hager. The Court granted summary judgment in favor of defendant Insurance Commissioner for the State of Iowa. Essentially, the Court found that the Liability Risk Retention Act did not preempt state insurance laws

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[2] Plaintiffs acknowledged this in the Motion to Consolidate Separate Actions, filed March 17, 1988.

regulating the operation of purchasing groups doing business in that state. The Court has attached a copy of its opinion in *Frontier*.

III. *CONCLUSION*

Insofar as the same issues of preemption are involved in the instant case, the Court finds in favor of defendants Hager and the Insurance Department for the reasons stated in its Order in *Frontier Insurance Company, Inc. v. Hager*, Civ. No. 87-645-E, filed April 27, 1988.

Dated this 15th day of June, 1988.

/s/ R. E. Longstaff
R. E. LONGSTAFF
U.S. MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FRONTIER INSURANCE COMPANY, INC., et al.,	)	CIVIL NO. 87-645-E
Plaintiffs,	)	ORDER
vs.	)	
WILLIAM D. HAGER, COMMISSIONER OF INSURANCE OF THE STATE OF IOWA,	)	
Defendant.	)	

This matter came before the Court upon the Motion for Summary Judgment filed by plaintiffs, Frontier

Insurance Company, Inc., et al., on January 20, 1988. Defendant, William D. Hager, Commissioner of Insurance of the State of Iowa, filed his Resistance to Motion for Summary Judgment and Cross-Motion for Summary Judgment on January 26, 1988. Plaintiffs filed Resistance to defendant's Cross-Motion for Summary Judgment on February 22, 1988. A hearing on the motions was held on March 10, 1988. Plaintiffs were represented by Bruce Foudree, and defendant by Fred Haskins. A supplement was filed by plaintiffs on March 11, 1988.

The parties consented to proceed before the undersigned United States Magistrate pursuant to 28 U.S.C. § 636(a) on January 22, 1988, and this lawsuit was referred on that same date. The matters raised in plaintiffs' and defendant's motions therefore may be determined by the Court at this time.

I. *BACKGROUND*

This lawsuit commenced when plaintiffs filed a complaint and petition for declaratory relief on September 9, 1987. Plaintiffs are Frontier Insurance Company, Inc. (Frontier), and six purchasing groups formed pursuant to the Liability Risk Retention Amendment of 1986, 15 U.S.C. § 3901-06 (1986 Amendment): National Purchasing Group for Sexual Abuse, Molestation and Exploitation, North American Horse Association, Inc., American Physicians Purchasing Group, American Dental Purchasing Group, American Part-Time Physicians Purchasing Group, and American Internists Purchasing Group. Frontier is licensed in the District of Columbia and the state of New York. Plaintiff purchasing groups are all domiciled

in the District of Columbia. Defendant is William Hager, the Commissioner of Insurance of the State of Iowa. Jurisdiction exists under 28 U.S.C. § 1331.

Between April 27, 1987, and June 2, 1987, each plaintiff purchasing group filed to operate as such with the Iowa Division of Insurance and named plaintiff Frontier as their insurer for liability coverage. A purchasing group is defined under the 1986 Amendment as any group which:

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State.

15 U.S.C. § 3901(a) (5).

A Notice of Hearing before the Insurance Division of the State of Iowa was filed by Defendant on July 22, 1987, alleging that Frontier was not an authorized insurance company in the State of Iowa and that Frontier, through the purchasing groups, was engaged in the unauthorized sale of insurance in Iowa in violation of Chapter 507A, Unauthorized Insurers Act, Iowa Code (1987).

A. *Focus of the Controversy*

The main issue in this controversy centers around § 3903(f) of the 1986 Amendment providing that:

> a purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is *located*, unless the purchase is affected through a licensed agent or broker acting pursuant to the surplus lines and regulations of such State.

15 U.S.C. § 3903(f) (emphasis added).

The specific language of this section that requires interpretation is " . . . from an insurer not admitted in the State where the purchasing group is located . . . ." Plaintiffs contend that the insurer for a purchasing group need only be licensed in the state where the purchasing group itself is domiciled. Since the purchasing groups are domiciled in the District of Columbia, and Frontier is licensed in the District of Columbia, plaintiffs maintain that Frontier has met the licensing requirements of 15 U.S.C. § 3903(f). Consequently, Frontier is not required to be an authorized insurer in Iowa in order to offer and issue liability insurance coverage to Iowa residents who are members of the purchasing groups.

Defendant, on the other hand, interprets a purchasing group as being located wherever its individual members are located. This means that the insurer for the purchasing group must be licensed in all of the states where purchasing group members reside. Defendant contends that if Frontier desires to cover Iowa residents of the plaintiff purchasing groups, then Frontier must be

admitted as a regular or surplus lines carrier in the State of Iowa.

B. *Historical Context*

The McCarran-Ferguson Act, enacted in 1945, states:

> Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress should not be construed to impose any barrier to the regulation or taxation of such business by the several States.

15 U.S.C. § 1011.

The primary legislative purpose of the McCarran-Ferguson Act was to reaffirm the individual states' power to regulate insurance and to ensure that state regulatory schemes would not be impaired and overridden except by specific Congressional enactments. *Hamilton Life Insurance Co. v. Republic National Life Insurance Co.*, 291 F. Supp. 225, 230 (S.D.N.Y. 1968).[1] The Supreme Court stated

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[1] In *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944), the Supreme Court decided that the business of insurance was commerce and therefore subject to federal regulatory legislation, specifically the anti-trust laws. *South-Eastern Underwriters* reversed the pre-existing rule that the business of insurance was not commerce and hence subject to only state regulation. See *Paul v. Virginia*, 75 U.S. 168 (1868). In order to allay any doubts that the *South-Eastern Underwriters* decision would impair the continuing power of the states to tax and regulate the business of insurance, Congress passed the McCarran-Ferguson Act.

shortly after the enactment of the McCarran-Ferguson Act that "obviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance." *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408, 429 (1946).

In 1981, Congress passed the Product Liability Risk Retention Act, 15 U.S.C. § 3901-3906 (1982). This act was premised on an 18-month study by the Federal Interagency Taskforce on Product Liability which analyzed the causes of the severe premium increases in the product liability insurance market and, in many cases, the unavailability of such coverage. H.R. Rep. No. 190, 97th Cong., 1st Sess. 4, *reprinted in* 1981 U.S. Code Cong. & Admin. News, 1432, 1432-33 (1981 Act). The 1981 Act sought to address the product liability problem in two ways. First, it permitted product manufacturers, sellers and distributors to form their own insurance cooperatives, known as "risk retention groups," which were intended to assume all or a portion of their product liability and completed operations risk exposure. Second, the 1981 Act enabled such businesses to purchased product liability insurance on a group basis.

In enacting this legislation, Congress recognized the difficulties for insurers in complying with the varying and conflicting laws of the many states in which they desired to do business. In addition, since many states prohibited the collective merchandising of property and casualty insurance, including product liability and completed operations insurance, provisions of the 1981 Act expressly provided for federal pre-emption of those state laws that prohibited, restricted, or inhibited the operation of risk retention groups or purchasing groups.

In the early 1980's, the problems encountered in the products liability sphere spread to other kinds of liability insurance coverage. Both individuals and businesses experienced problems with meeting the costs of liability coverage. Consequently, the 1981 Act was amended in 1986 to expand the scope of federal pre-emption to enable risk retention groups and purchasing groups to provide not only product liability insurance but all types of liability insurance. As indicated previously, the 1986 Amendment provides the focus for the present litigation.

II. *DISCUSSION OF APPLICABLE LAW*

A. *Summary Judgment*

Federal Rule of Civil Procedure 56(c) provides that summary judgment may be rendered in a case "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In a recent Supreme Court decision which interpreted this rule, the Court stated that "summary judgment is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every issue." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (citations omitted). Summary judgment is also an appropriate mechanism for disposing of legal questions, *Mobil Oil Corp. v. FEA*, 566 F.2d 87, 92 (Temp. Emer. Ct. App. 1977), and "where a decision turns on the meaning of the words in a statute . . . , a legal

question is presented for the court to decide." *International Society for Krishna Consciousness v. Rochford*, 425 F. Supp. 734, 738 (N.D. Ill. 1977). There is no genuine issue of material fact in this case. The decision hinges, rather, on the legal question regarding the interpretation of the word "located" in 15 U.S.C. § 3903(f). This matter may properly be resolved in a summary judgment proceeding.

B. *Statutory Interpretation*

Because the question presented in this hearing involves the interpretation of a recently enacted statutory amendment, there is little case law relating to this matter. Thus, the Court must utilize the traditional signposts for cases of first impression of statutory construction, the language of the statute itself and the statute's legislative history. *United States v. Gray*, 809 F.2d 579, 582 (9th Cir. 1987).

1. *Construction of Statutory Language*

The 1986 Amendment provides that an insurer must be licensed in "the state" in which the purchasing group is located unless it uses a surplus lines agent in "such state." 15 U.S.C. § 3903(f). Plaintiffs contend that the use of the words "the state" and "such state" can only be interpreted to mean one location, thus one state. They further cite the language in 15 U.S.C. § 3903(d) which provides that, in its notice to a state where it intends to do business, a purchasing group should identify "the

state" in which such group is domiciled. Since the purchasing group can only be domiciled in one state, plaintiffs urge that a singular construction of the "the state" and "such state" in the domiciled phrase parallels a singular interpretation of "the state" and "such state" in the located phrase at issue.

Defendant, however, is able to make the same argument in favor of his position. The terms "the state" and "such state" could just as easily be indicative of the plural as of the singular if "located" is interpreted to mean all of the residences of the particular members of the purchasing group. Each member may have only one location, but there are multiple members.

Plaintiffs also contend that the separate use of "doing business" and "is located" in the 1986 Amendment indicates that Congress intended these terms to have different meanings. If the phrase "is located" was intended to refer to multiple states, Congress would have used the term "doing business." Plaintiffs base this argument on the premise that where different language is used in different parts of a statute, it is presumed that the language is used with a different intent. 73 Am. Jur. 2d *Statutes* § 235 (1974).

This same argument, however, may also be used to support defendant's contention. Defendant argues that Congress used the different terms, "domiciled", "located," and "principal place of business," because it intended different interpretations of each. Under this argument "located" does not necessarily mean that one state in which the purchasing group is "located." Indeed, "located" could just as easily be interpreted to mean all of

those states in which the individual members of the purchasing group reside.

2. *Case Law Interpreting "Located"*

To interpret "located" under the 1986 amendment, plaintiffs rely on the definition courts have accorded "located" in interpreting the National Banking Act, 12 U.S.C. § 94 (NAB Act). The pertinent section of the NAB Act provides that a suit may be instituted against a national bank only in the district in which the bank is established or in which it is located. *Cope v. Anderson*, 331 U.S. 461, 467 (1947) ("for jurisdictional purposes, a national bank is a citizen of the state in which it is established or located, and in that district alone it can be sued"). "The overwhelming authority . . . supports the proposition that a national bank does not become 'established' or 'located' in any district where it may open or operate a branch office." *United States National Bank v. Hill*, 434 F.2d 1019, 1020, (9th Cir. 1970).

Conversely, defendant cites to how the term "located" is customarily used in the insurance trade. Under property and casualty policies, located almost always is associated with the situs of the risk. *Howard Foundry Co. v. Hartford Fire Insurance Co.*, 222 F.2d 767, 769 (7th Cir. 1955). Under this interpretation, the risks would be situated where the individual members of the purchasing group reside. Defendant additionally relies on established principles of association law. An unincorporated association, such as some of these purchasing groups, is located where its members reside because it has no legal existence apart from the members. 7 C.J.S. *Associations* § 3

(1980). For purposes of diversity jurisdiction and venue in an action against an unincorporated association, the citizenship of the association is where the members reside. *Arbuthnot v. State Auto Insurance Association*, 264 F.2d 260, 261 (10th Cir. 1959); 7 C.J.S. *Associations* § 45 (1980). Defendant states that this result is the same in the case of an incorporated association because the federal venue statute provides that a corporation can be sued in any district in which it is incorporated, or licensed to do business, or doing business, and such judicial district shall be regarded as the residence of such corporation. 28 U.S.C. § 1391(c).

3. *Legislative Intent and History*

Plaintiffs' main argument revolves around the intent of Congress and the underlying reasons for the enactment of this legislation. In the 1980s, liability insurance in many spheres had become extremely costly and difficult to procure. Federal pre-emption of state laws restricting the formation of risk retention groups and purchasing groups as an alternative mechanism for obtaining coverage was necessary to alleviate this crisis. Plaintiffs maintain that Congress through the 1986 Amendment intended to free purchasing groups and their insurers from multiple and inconsistent state regulation. Requiring these associations to be licensed in all states in which they do business would defeat this objective.

General congressional intent, however, also supports defendant's construction. The 1986 Amendment enhanced the original 1981 Act by providing the states with improved ability to monitor and take action against

abuses, and did not demonstrate a congressional intent to leave the state without effective regulatory control of purchasing groups. H.R. Rep. No. 865, 99th Cong., 2d Sess. 17, *reprinted in* 1986 U.S. Code Cong. & Admin. News 5303, 5314. Congress obviously continued to consider licensure to be one way for states to prevent abuses.

A review of the legislative history of the 1986 Amendment does not definitively answer the question of which interpretation of "located" Congress intended. *Id.* One argument that would support defendant's position would be the wording used in the 1986 Amendment's purpose and summary statement. In this statement, there is a phrase that states, "with respect to risk retention groups, the 1981 law contemplated that the state in which the group was chartered would retain its authority to regulate the group, while non-chartering states would have more limited regulatory authority . . . . The current legislation retains this distinction." *Id.* This could be interpreted to indicate that the 1986 Amendment is intended to provide the states with increased authority over the regulation of purchasing groups since the issue of one-state regulation in the purpose and summary statement deals specifically only with risk retention groups.

The legislative history does stress the fundamental difference between the laws of the non-chartering states that were pre-empted for risk retention groups and the laws of the states that were pre-empted for purchasing groups. *Id.* at 5315-5316. For risk retention groups, the 1986 Amendment states a broad exemption from the laws of non-chartering states and then enumerates specifically which powers were retained by these states. *Id.* The

approach of the 1986 Amendment is different, however, with respect to purchasing groups. *Id.* The 1986 Amendment specifically recognizes a limited number of identifiable states laws that prevented the establishment and functioning of purchasing groups. *Id.* It is these laws that are pre-empted. *Id.* Subject to these exceptions, the states remain free to apply their other regulatory laws to purchasing groups. *Id.*

However, because the bulk of the testimony at these hearings dealt with risk retention groups instead of purchasing groups, it is difficult to construe the breadth of pre-emption of state laws relating to the latter entity to the degree of absolute certainty.

C. *Pre-emption Doctrine*

Inherent in this controversy is the issue of whether Congress, in enacting the 1986 Amendment, intended to exempt purchasing group insurers from existing state licensing requirements. The Supremacy Clause of Article VI of the Constitution provides Congress with the power to pre-empt state law. Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law, *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977), when there is an outright conflict between federal and state law, *Free v. Bland*, 369 U.S. 663 (1962), where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, *Rice v. Sante Fe Elevator Corp.*, 331 U.S. 218 (1947), or where state law stands as an obstacle to the accomplishment and

execution of the full objectives of Congress, *Hines v. Davidowitz*, 312 U.S. 52 (1941).

A critical question in any pre-emption analysis is whether Congress intended that federal regulation supercede state law. Limited pre-emption of state insurance laws which regulate purchasing groups is found at 15 U.S.C. § 3903(a)(1)-(8). This section specifically enumerates which laws of the states are pre-empted for purchasing groups as follows:

> (a) Except as provided in this section and section 3905 of this title, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would
>
> (1) prohibit the establishment of a purchasing group;
>
> (2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;
>
> (3) prohibit a purchasing group or its members from purchasing insurance on a group basis in paragraph (2) of this subsection;
>
> (4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;
>
> (5) require that a purchasing group must have a minimum number of members, common

ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

15 U.S.C. § 3903(a)(1)-(8). Significantly, none of the provisions above explicitly exempt purchasing groups from being licensed in the state where a purchasing group member may reside.

There is no outright conflict between state and federal law in this case. The provisions of 15 U.S.C. § 3903(a)(1)-(8) simply state exemptions for purchasing groups rather than defining any affirmative conditions with which these groups must comply. These explicit exemptions were aimed at specific state laws which prohibited or severely hindered the operation of purchasing groups. Requiring plaintiff Frontier to be licensed in Iowa before offering insurance coverage to Iowa purchasing group members does not conflict with these exemptions.

By enacting the McCarran-Ferguson Act, Congress intended that the states maintain a long-standing tradition and retain the power for almost exclusive regulation of the business of insurance. In the forty years since this enactment, Congress has occupied only a limited role in this field. Probably one of the most traditional means of insurance regulation is by a state's licensing of an insurer

desiring to cover risks within the state. This licensing is necessary as an important safeguard for a state's citizens. Iowa citizens covered by a carrier licensed in Iowa have the additional protection of the Iowa Guaranty Fund Coverage in the event the insurer becomes insolvent. This protection would not be available if plaintiffs' interpretation of located is adopted. Only the guaranty fund coverage of the District of Columbia or New York would be available to persons insured by Frontier in the event of Frontier's insolvency. The absence of protection by the Iowa Guaranty Fund concerns not only Iowa residents who become members of purchasing groups covered by non-admitted carriers but also could affect potential claimants who might seek redress against Iowa resident members. Without licensing, these claimants are unprotected by Iowa's guaranty fund.

The extent to which the 1986 Amendments pre-empt state insurance laws regulating purchasing groups has already been addressed by at least one court. In *The Insurance Company of the State of Pennsylvania*, No. 87 Civ. 6118 (JFK)(S.D.N.Y. Sept. 24, 1987), plaintiff purchasing group sought injunctive relief from a state law requiring that it obtain prior approval of rates and insurance forms from the New York Insurance Department. Plaintiff argued that the requirement was a de facto prohibition of purchasing groups and, therefore, was pre-empted by the 1986 Amendments. *Id.* slip op. at 4. Defendant countered by stating that there was no express pre-emption to the New York law. Indeed, "Congress intended to permit state regulation of purchasing group policies." *Id.* The Court, in granting defendant's motion for summary judgment, stated:

> In the case at bar, although the Act certaining (sic) relates to the business of insurance, the exemptions in § 3903 do not specifically indicate that congress wished to supercede state regulation of rates and forms of purchasing group policies. It is significant that the New York rate and form requirements do not prohibit or make unlawful the purchasing group policies offered by State of Pennsylvania, but only provide a mechanism by which the state can supervise such policies.

Id. slip op. at 4-5.

Allowing states in which purchasing group members are located to require licensing does not stand as an obstacle to the accomplishment and execution of the full objectives of Congress. While Congress wanted to facilitate the formation and operation of purchasing groups, Congress did not divest the states of all their regulatory powers. The 1986 Amendment specifically recognized that a limited number of identifiable state laws prevented the establishment and functioning of purchasing groups. These laws were pre-empted. Subject to these exceptions, Congress explicitly intended that the states would be free to regulate purchasing groups and their insurers. This intention was clearly manifested in the language of 15 U.S.C. § 3903(g):

> Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter.

The principle to be derived from the Supreme Court decisions regarding pre-emption is that federal regulation of a field of commerce should not be deemed pre-emptive

of state regulatory power in the absence of persuasive reasons – either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963). Neither situation exists here.

III. *CONCLUSION*

After considering all arguments advanced by the parties, plaintiffs' Motion for Summary Judgment is denied and defendant's Motion for Summary Judgment is granted. The Clerk shall enter judgment accordingly.

Dated this 27th day of April, 1988.

/s/ RE Longstaff
R. E. LONGSTAFF
U.S. MAGISTRATE

APPENDIX C

ARTICLE. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

APPENDIX D

[¶20,101]

RISK RETENTION ACT
15 U.S.C. §§3901-3906 (1987 Supp.)

CHAPTER 65 – PRODUCT LIABILITY RISK RETENTION

Sec.

3901. Definitions

3902. Risk retention groups.

3903. Purchasing groups.

3904. Securities laws.

3905. Permissible state authority.

3906. Injunctive orders.

Short Title

This act may be cited as the "Liability Risk Retention Act of 1986," as amended by Public Law 99-563, 100 Stat. 3170, approved and effective October 27, 1986.

§ 3901. Definitions

(a) As used in this chapter –

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability" –

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of –

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association –

(A) whose primary activity consists of assuming, and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which –

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Act of 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which –

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as –

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the

membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than –

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".

(5) "purchasing group" means any group which –

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability

to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State;

(6) "State" means any State of the United States or the District of Columbia; and

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able –

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification or risk retention groups of purchasing groups.

Short Title

Section 12(a) of Pub.L. 99-563 provided that

"This Act may be cited as the 'Liability Risk Retention Act of 1986'."

§ 3902. Risk retention groups

(a) Except as provided in this section, risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would –

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to –

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policy holders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioners in any State in which the group is doing business to determine the group's financial condition, if –

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has

refused to initiate an examination of the group; and

(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;

(F) comply with a lawful order issued –

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding;

(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"NOTICE

"This policy is issued by our risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise, discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to –

(1) liability insurance coverage provided by a risk retention group for –

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of –

(A) insurance related services;

(B) management, operations, and investment activities; or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

(c) A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Each risk retention group shall submit –

(1) to the insurance commissioner of the State in which it is chartered -

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State –

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by –

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist.

(e) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin –

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f)(1) Subject to the provision of subsection (a)(1)(G)(relating to injunctions) and paragraph (2), nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this Act.

(2) if a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.

(h) Nothing in this Act shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

§ 3903. Purchasing groups

(a) Except as provided in this section and section 6, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would –

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to the other person with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or

because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

(b) The exemptions specified in subsection (a) of this section apply to –

(1) liability insurance provided to –

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of –

(A) liability coverage;

(B) insurance related services; or

(C) management services; to a purchasing group or member of the group.

(c) A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group

obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d)(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice –

(A) shall identify the State in which such group is domiciled;

(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

(D) shall identify the principal place of business of the group.

(2) Such purchasing group shall notifying the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group –

(1) which –

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after the date of the enactment of this Act; in any State of the United States;

(2) which –

(A) before the date of the enactment of this Act, purchased insurance from an insurance carrier licensed in any State; and

(B) since such date of enactment, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this Act before the date of the enactment of the Risk Retention Amendments of 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this Act as in effect before the date of the enactment of the Risk Retention Amendments of 1986.

(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.

(g) Nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this Act.

(h) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State Court.

§ 3904. Securities laws

(a) Ownership interest of members in risk retention groups

The ownership interests of members in risk retention group shall be –

(1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] and for purposes of section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 781]; and

(2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933 [15 U.S.C. 77q] and the provision of section 10 of the Securities Exchange Act of 1934 [15 U.S.C. 78j].

(b) Investment companies

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) State blue sky laws

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

§ 3905. Permissible state authority

(a) Nothing in this Act shall be construed to exempt a risk retention group or purchasing group authorized under this Act from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

(b) The exemptions provided under this Act shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this Act shall be construed to permit the provision or purchase of any other line of insurance by any such group.

(c) The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) Subject to the provisions of section 3(a)(4) relating to discrimination, nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

§ 3906. Injunctive orders

Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in

any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in §3904(b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified principally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

[¶20,102] Oversight of Implementation; Report to Congress

(a) In general –

(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act.

(2) Such report shall be based on –

(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

(B) the Secretary's analysis of other information available to the Secretary.

(b) Contents of the report. – The report shall describe the Secretary's views concerning –

(1) the contribution of this Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act and the Product Liabiility Risk Retention Act (as amended by this Act); and

(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act.

(Pub.L. 99-563, §10, October 27, 1986.)

[¶20,103] Effective date; applicability

(a) General rule. – Subject to the subsection (b), this Act shall take effect on the date of its enactment.

(b) Special rule regarding feasibility study. – The provisions of section 3(d) of the Liability Risk Retention Act of 1986 (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which –

(1) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of this Act; and

(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment.

(Pub.L. 99-563, §11, October 27, 1986)

APPENDIX E

515E.9 Purchasing group restrictions.

A purchasing group shall not purchase insurance from a risk retention group or from an insurer unless one or more of the following conditions apply:

1. The risk retention group is licensed or organized in a state in which the purchasing group is located.

2. The insurer is admitted in the state in which the purchasing group is located.

3. The purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and rules of the state in which the purchasing group is located, regardless of whether the insurer is admitted in that state or the risk retention group is licensed or organized in that state.

4. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group, which have a risk resident or located in this state, that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention-group or insurer may not be subject to all insurance laws and regulations of this state. A purchasing group shall not purchase insurance providing for a deductible or self-insured retention, unless the deductible or self-insured retention is applicable to individual members of the purchasing group.

88 Acts, ch 1111, § 10

APPENDIX F

PURCHASING GROUPS

[Editor's Note: Purchasing Group (PG) information appears in the following order: Name of PG and its state of domicile; lines and classes of liability PG intends to buy; name of insurer(s) and domicile(s); pulse point state(s) where PG has filed Notice. An asterisk indicates the purchasing group (or risk retention group) has been added since the last issue of the RRR.]

AAAA [ASBESTOS ABATEMENT ASSN. OF AMERICA] (TX): Comprehensive general liability; Mid-American Indemnity Ins. Co. (Cayman Is.); CO, TN

ABI AUTOS FOR HIRE RISK PG, INC. (AZ): Auto & general liability for rental cars, limos & taxis; Protective Casualty Ins. Co. (MO); CA

ACCOUNTANTS PROFESSIONAL LIABILITY GROUP (CA): Accountants professional liability; Security Ins. Co. of Hartford (CT); Connecticut Indemnity Co. (CT); CA, CO, DE, HI, TN, TX, VT

ACCOUNTANTS RISK MANAGEMENT SOCIETY PG (CA): Professional liability; Harbor Ins. Co. (CA); Pacific Ins. Co. (CA); CA

ACTUARIES & PENSION ADMINISTRATORS PG (CA): Errors & Omissions for Actuaries & Pension Administrators; Planet Ins. Co. (WI); CA, CO, DE, TX, TN

ADVANTAGE INS. PG (IL): Contractual Liability for Auto Warranties; Western Diversified Casualty Ins. Co. (IL); CA, CO, DE, TN, VT

AEIC PG (IL): Professional Liability for Architects & Engineers; Natl. Union Fire Ins. Co. (PA); CA, CO, DE, HI, TN, TX, VA, VT

AERIALIFT LIABILITY ASSN. OF AMERICA (UT): General liability for aerialift platforms and contractors equipment; Homestead Ins. Co. (PA); Southern American Ins. Co. (UT); CO, DE, TN, TX

AGENTS ASSN. OF AMERICA (CA): Professional Liability for Life & Health Ins. Agents; Golden Eagle Ins. Co. (CA); CA

AHA HEALTHCARE INSTITUTIONS D&O PG (CA): Directors & Officers Liability for American Hospital Assn. members; The Doctors' Company (CA); CA, CO, DE, TN, VA, VT

ALLIED HEALTH PG ASSN. (IL): Medical Liability for professionals engaged in the delivery of allied and home healthcare services; Chicago Ins. Co. (IL); CA, CO, DE, HI, TN, VA, VT

AMBULATORY CARE EMERGENCY PG, INC. (TX): Medical professional liability; Natl. Union Fire Ins. Co. (PA); CA, CO, DE, TN, TX, VT

AMERICAN ACADEMY OF PHYSICIANS ASSISTANTS (AAPA) (TN): Professional Liability; American Continental Ins. Co. (MO); CA, CO, DE, HI, TN, TX, VA, VT

AMERICAN ACUPUNCTURE COUNCIL PG (CA): Professional liability; Pro-Med Intl., Ltd. (Eng.); CA

AMERICAN ALCOHOLIC BEVERAGE CORP. (KY): Liquor Liability; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

AMERICAN AMBULANCE ASSN. (AZ): Liability; AzStar Ins. Co. (AZ); VA

AMERICAN AMUSEMENT PG, INC. (KY): General liability; American Ins. & Indemnity Corp. (KY); CA, VT

AMERICAN ANESTHESIOLOGISTS PROF. LIAB. GROUP (TX): Professional liability; American Physicians Ins. Exchange (TX); TN, TX, VT

AMERICAN ASBESTOS ABATEMENT CONTRACTORS ASSN., INC. (KY): Commercial General Liability, Products, Completed Operations; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

AMERICAN ASSN. FOR COUNSELING AND DEVELOPMENT (DC): Professional Liability for Members; RLI Ins. Co. (IL); CA, CO, DE, TN, TX, VA, VT

AMERICAN ASSN. OF ORAL & MAXILLOFACIAL SURGEONS (IL): Liability Ins. for Oral Surgeons; St. Paul Fire & Marine Ins. Co. (MN); CA, CO, DE, HI, TN, TX, VA, VT

AMERICAN ASSN. OF ORTHODONTISTS (MO): Professional liability; Scottsdale Ins. Co. (OH); Natl. Casualty Co. (MI); CA, CO, DE, TN, TX, VT

AMERICAN BANKERS ASSN. (DC): Professional Liability; Progressive Casualty Ins. Co. (OH); CA, CO, DE, TN, VT

AMERICAN CHEMIST ASSN. INC. (KY): Chemists Professional Liability; American Ins. & Indemnity Corp. (KY); CA, DE, TN

AMERICAN COLLECTORS ASSN. ENTERPRISES, INC. (MN): Professional Liability for Members; General Ins. Co. of America (WA); CA, CO, DE, TN, VA, VT

AMERICAN CONTINENT LAW ENFORCEMENT & MUNICIPAL LIABILITY ASSN., INC. (UT): Professional liability for law enforcement; Homestead Ins. Co. (PA); Southern American (UT); CO, DE, TN, VT

AMERICAN CONTRACTORS ASSN., INC. (KY): Commercial General Liability, Products, Completed Operations; American Ins. & Indemnity Corp. (KY); CA, CO, DE, TN, VT

AMERICAN CONTRACTORS RPG, INC. (TX): General & Auto Liability; Continental Ins. Co. (NH); CA, CO, DE, TN, TX, VT

AMERICAN DEALERS PURCHASING GROUP, LTD. (IL): Contractual liability; United Equitable Ins. Co. (IL); CO, DE, HI, TN, TX

AMERICAN DENTAL PROF. LIAB. GROUP (TX): Professional liability; American Physicians Ins. Exchange (TX); TN, TX, VT

AMERICAN DENTAL PG (DC): Medical Malpractice; Frontier Ins. Co. (NY); CA, CO, DE, TN, VA, VT

AMERICAN ENVIRONMENTAL PG, INC. (MO): Pollution liability; Bel-Aire Ins. Co. (MO); DE, CO, VT

AMERICAN ENVIRONMENTAL CONSULTANTS PG (PA): Professional liability; American Professionals Ins. Co. (IN); DE, TN

AMERICAN ENVIRONMENTAL CONTRACTORS, PG (PA): Professional liability; American Professionals Ins. Co. (IN); DE, TN, VT

AMERICAN FREEDOM CARRIERS RPG (IN): Trucking Physical Damage; Continental American Ins. Co. (IN); CA, TN, VT

AMERICAN HEALTH CARE PROFESSIONALS PG ASSN. (IL): Medical Professional Liability; Transamerica Ins. Co. (CA); CA, DE, HI, TN, VT

AMERICAN INS. & REAL ESTATE AGENTS PG, INC. (KY): Errors & Omissions; American Ins. & Indemnity Corp. (KY); CA, DE, TN, TX, VT

AMERICAN INSURANCE PROFESSIONAL ASSN. INC. (MO): Professional liability; Bel-Aire Ins. Co. (MO); TX

AMERICAN INTERNISTS' PG (DC): Medical Malpractice; Frontier Ins. Co. (NY); CA, CO, DE, TN, VA, VT

AMERICAN LAWYERS PG, INC. (KY): Professional Liability; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

AMERICAN LIVERY PG, INC. (KY) (aka: Kentucky Council American Livery): Commercial auto and umbrella liability for trucking distributors; American Ins. & Indemnity Corp. (KY); CA, DE, VT

AMERICAN LOCATORS & RECOVERY ASSN. (WY): Comprehensive general liability and garage keepers legal liability for automobile repossessors; Laramie Ins. Co. (WY); CA, DE, TN, VT

***AMERICAN MANUFACTURERS PG (WY):** Products liability & general liability; Oxford Indemnity Ins. Co. (WY); CA, CO, DE, TN

AMERICAN MOSQUITO MANAGEMENT INS. ASSN., INC. (UT): General Liability Specifically Designed for Mosquito Control; Homestead Ins. Co. (PA); Southern American Ins. Co. (UT); CA, CO, DE, TN, TX, VT

AMERICAN MULTI-SPECIALTY PROF. LIAB. GROUP (TX): Professional liability; American Physicians Ins. Exchange (TX); TN, TX, VT

AMERICAN NONPROFIT DIRECTORS & OFFICERS PG, INC. (KY): Directors & Officers; American Ins. & Indemnity Corp. (KY); CA, VT

AMERICAN OBSTETRICAL & GYNECOLOGICAL PROF. LIAB. GROUP (TX): Professional liability; American Physicians Ins. Exchange (TX); TN, TX, VT

AMERICAN ORTHODONTIST PROF. LIAB. GROUP (TX): Professional liability; American Physicians Ins. Exchange (TX); TN, TX, VT

AMERICAN ORTHOPEDICS PROF. LIAB. GROUP (TX): Professional liability; American Physicians Ins. Exchange (TX); TN, TX, VT

AMERICAN PART-TIME PHYSICIANS PG (DC): Medical Malpractice; Frontier Ins. Co. (NY); CA, CO, DE, TN, VA, VT

***AMERICAN PEST CONTROL ALLIANCE, INC. (TX):** Liability for pest control operators; Universal Security Ins. Co. (TN); TX

AMERICAN PEST CONTROL PG INC. (FL): General liability; auto liability; Millers Natl. Ins. Co. (IL); Oxford Indemnity Ins. Co. (WY); CA, CO, DE, HI

AMERICAN PHYSICAL THERAPY ASSN. PG (IL): Professional liability; Chicago Ins. Co. (IL); CA, CO, DE, HI, TN, TX, VT

AMERICAN PHYSICIANS PG (DC): Medical Malpractice; Frontier Ins. Co. (NY); CA, CO, DE, TN, VA, VT

AMERICAN PSYCHIATRIC ASSN. PG, INC. (NY): Professional Liability; RLI Ins. Co. (IL); CA, CO, DE, HI, TN, VA, VT

AMERICAN REAL ESTATE PROFESSIONALS ASSN. (MO): Errors & Omissions for Real Estate Agents; Bel-Aire Ins. Co. (MO); CA, DE, TN, TX, VT

AMERICAN RENTAL DEALERS INS. (MO): Commercial General Auto Liability, Umbrella Excess Liability; Lincoln Ins. Co. (DE); VA, VT

AMERICAN SADDLE ANIMAL ASSN. (MO): Saddle Animal Liability; Bel-Aire Ins. Co. (MO); CA, TN, TX, VA, VT

AMERICAN SOCIETY OF ACCOUNTANTS, INC. (FL): Professional liability for accountants; Illinois Ins. Exchange (IL); CA, TN, TX, VT

AMERICAN TOOL, MACHINE AND OUTDOOR EQUIPMENT MFGS. PG, INC. (KY): Commercial General Liability; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

AMERICAN TRANSPORTATION RISK PG (OH): Auto and long-haul trucking liability; Cadillac Ins. Co. (MI); CA, CO, DE, TN, VT

AMERICAN VETERINARY MEDICAL ASSN. (IL): Professional Liability; Centennial Ins. Co. (NY); CA, CO, DE, HI, TN, TX, VA, VT

AMERICAN WOOD SUPPLIERS LIABILITY GROUP (DE): Liability for members; Capital City Ins. Co. (SC); CA, DE, TN, VA, VT

AMUSEMENT RISK PG, INC. (IL): General liability; Millers-Illinois Ins. Co. (IL); Oil & Gas Ins. Co. (OH); Petrosurance Casualty Co. (OK); The Illinois Ins. Co. (IL); CA, TN

APEX REAL ESTATE AGENTS RPG (MN): Professional liability; Home Ins. Co. (NY); VT

APGA (AMERICAN PUBLIC GAS ASSN.) INSURANCE GROUP INC. (TN): General Liability & Auto Liability (effective 7/1/88); Errors & Omissions, Directors & Officers effective (7/1/89); Ranger Insurance Co. (DE); CA, CO, DE, HI, TN, TX, VT

APPRAISER LIABILITY INS. TRUST PG (MO): Professional Liability Exclusively for Real Estate Appraisers by Direct Mail; Saver's Property & Casualty Ins. Co. (MO); H.S. Weavers Underwriting Agencies, Ltd. (Eng.); Cal.-Fed Syndicate, Ill. Ins. Exch.; CA, CO, DE, HI, TN, TX, VA, VT

APPRAISER'S LIABILITY INS. PROGRAM ASSN. RISK PG (IL): Errors and omissions for real estate appraisers; Intl. Ins. Co. (IL); CA, CO, DE, TN, TX, VT

ARM/ELECTRICAL CONTRACTORS PURCHASING GROUP (CA): Commercial General & Automobile Liability; Superior Natl. Ins. Co. (CA); CA

ARM/GLAZIERS PG (CA): Commercial General & Automobile Liability; Superior Natl. Ins. Co. (CA); CA

ARM/HEATING & AIR CONDITIONING PG (CA): Commercial General & Automobile Liability; Superior Natl. Ins. Co. (CA); CA

ASBESTOS ABATEMENT ASSN. OF AMERICA (Unk): Liability; Mid-American Indemnity Ins. Co. (TX); TX

ASBESTOS ABATEMENT PG OF AMERICA, INC. (LA): General liability for asbestos abatement and containment; Presidential Fire and Casualty Co. (LA); CA, CO, TN

ASSN. FOR INTERCITY RELOCATORS (UT): Real Estate Agent/Broker Errors & Omissions; Utah Home Fire Ins. Co. (UT); CA, DE, TN, VT

ASSN. OF MEDICAL EQUIPMENT DEALERS, INC. (AZ): Products, Completed Operations; AzStar Ins. Co. (AZ); CA, DE, TN, VA, VT

ASSN. OF SOLID WASTE & REFUSE HAULERS PG (UT): Comprehensive general liability & auto liability; Associated Intl. Ins. Co. (CA); CA, CO, DE, TN, VT

ASSN. OF TRUCK OPERATORS (VA): Long Haul Truck, Commercial Auto; Markel American Ins. Co. (VA) or Essex (VA); CA, CO, DE, HI, TN, TX, VA, VT

ASSOCIATED CONSTRUCTORS INSURANCE PG (CA): General liability; Ponderosa Ins. Co. (NV); CA

ASSOCIATED CREDIT BUREAUS, INC. (MO): Errors & Omissions Liability for Credit Bureaus and Collection Agencies; General Ins. Co. of America (WA); CA, CO, DE, HI, TN, TX, VT

ASSOCIATED RESTAURANT MANAGEMENT PG (RI): Comprehensive General Liability, Liquor Law, Non-Owned & Hired Auto; Natl. Union Fire Ins. Co. (PA); RLI Ins. Co. (IL); CA, CO, TN, VA, VT

ASSOCIATIONS PG (IL): Directors & Officers and Professional Liability; Chicago Ins. Co. (IL); CA, CO, DE, HI, TN, TX, VA, VT

ASSURANCE PURCHASERS COOP., INC. (MO) (aka: ASSURANCE PURCHASERS PG, INC.): Liquor Liability Master Policy; Bel-Aire Ins. Co. (MO); CA, DE, HI, TN, TX, VA, VT

AUTOMATIC TRANSMISSION REBUILDERS ASSN. (CA): Auto Repair Liability; Heritage Indemnity Co. (CA); CA, CO, DE, TN, TX, VT

AUTOMOBILE DEALERS COOP. OF AMERICA, INC. PG (CA): Extended Services Contracts; Western General Ins. Co. (CA); CA, CO, DE, HI, VT

AUTOMOTIVE INS. PG (TX): Auto Dealers' Liability Extended Warranty; Nobel Lloyds Ins. Co. (TX); CA, CO, DE, TN, TX, VA, VT

AUTOPLAN PG (NE): Contractual Liability; Insurer Unknown; CA

AVERBECK DEVELOPERS PG (CA): Commercial General & Automobile Liability; Superior Natl. Ins. Co. (CA); CA

AVIATION LIABILITY PG, INC. (MO): Aviation & Commercial General Liability; Bel-Aire Ins. Co. (MO); CA, TN

BAIL BOND AGENTS RISK PG, INC. (IN): General and professional liability for bail bond agents; Universal Security Ins. Co. (TN); CA, CO, DE, TN, TX

BENEFIT ADMINISTRATORS PG (MS): Professional liability for members; Walbrook Ins. Co., Ltd. (Eng.); Anglo American Ins. Co., Ltd. (Eng.); St. Katherine Ins. Co. Ltd. (Eng.); Generali Ins. Co., Ltd. (Eng.); CO, TN

BETTER HOMES & GARDENS REAL ESTATE SERVICES, INC. PG (IA): Professional Liability for Real Estate Agents and Brokers; Home Ins. Co. (NH); CA, CO, DE, HI, TN, TX, VA, VT

BRC FRANCHISE HOLDERS INS. PG, INC. (CA) (Previously known as: BUDGET RENT-A-CAR FRANCHISE HOLDERS PG): Auto & General Liability for Daily Rental Operations; Travelers Indemnity Co. (CT); CO, TN, TX, VT

BROWNGUARD ASSN. OF DELAWARE (DE): Comprehensive general liability/Security guard errors & omissions; Home Ins. Co. (NH); DE, TN

BUTLER GENERAL CONTRACTORS/SNI PG (CA): General Liability & Commercial Auto Liability; Superior Natl. Ins. Co. (CA); CA

***CABLE OPERATORS PG, INC. (MO):** Service indemnification liability for members; Bel-Aire Ins. Co. (MO); CO, DE, TN, VT

CALIFORNIA ANIMAL FEED MFG. GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA AUCTIONEERS GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA BEVERAGE DISTRIBUTORS GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA CARWASH ASSN./SNI PG (CA): Commercial General Liability, Commercial Auto & Garage Liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA DRYCLEANING GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA ELECTRONIC GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA HARDWARE STORE GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA LANDSCAPING CONTRACTOR GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA METALS GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA MOBILE HOME PARK GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA PACIFIC AGENTS & BROKERS ASSN. (CA): Life/Health Agents' Errors & Omissions; Lexington Ins. Group (MA); CA, DE, TN, VT

CALIFORNIA PAPER STOCK GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA PRODUCE HANDLER GROUP/SNI LPG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA SCRAP METAL DEALERS GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CALIFORNIA SHOE STORE GROUP/SNI PG (CA): Auto and commercial general liability; Superior Natl. Ins. Co. (CA); CA

CENTURY 21 PG (CA): Professional Liability for Real Estate Agents & Brokers; Home Ins. Co. (NH); CA, DE, HI, TN, TX, VA, VT

CHIMNEY SWEEP PG ASSN., INC. (CO): Commercial General Liability; RLI Ins. Co. (IL); CO, DE, HI, VA, VT

COCA-COLA BOTTLERS ASSN. (GA): Umbrella Liability, Products Withdrawal and Extortion; General Star Natl. Ins. Co. (OH); CA, CO, TN, TX, VA, VT

COLORADO WATER USERS RISK MANAGEMENT ASSN. (CO): General Liability and D&O for

Members Engaged in Activities Related to Storage and Delivery of Water; Natl. Union Fire Ins. Co. (PA); CO

COMMERCIAL AND PROFESSIONAL INS. ASSN./PROFESSIONAL LIABILITY RISK PG (UNK): Professional liability; Euro/American Ins. Co. Ltd. (Turks & Caicos); CO, HI, TN, VT

COMMERCIAL VEHICLE OWNERS & OPERATORS PG (TX): Auto liability; Insurer unknown; TX

COMMON INTEREST COMMUNITY UNDERWRITING SERVICES, INC. (IL): E&O for property managers & management cos.; D&O for condos, co-ops, HOAs, & other community assns.; City Insurance Co. (NJ); CA, CO, DE, TN, VT

CONSULTANTS LIABILITY PG, INC. (IL): Liability for Executive Search Firms, Recruiters & Management Consultants; Homestead Ins. Co. (PA); CA, CO, TN, TX, VT

CONSUMER RESOURCE SERVICES ASSN., INC. (TX): General & auto liability for licensed child care centers; Universal Security Ins. Co. (TN); TX

CONTRACT LIABILITY PG, INC. (OK): Liability Ins. for Distributors of Commercial and Household Audio and Audio Visual Products; American Lender Ins. Co. (OK); CA, CO, DE, TN

CONTRACTORS OF AMERICA PG (TX): General, auto & excess liability for contractors; American Guardian Ins. Underwriters Lloyds (TX); Gulf Group Lloyds; TX

DEALER INDEMNITY ASSN., INC. (MO): Contractual liability; Bel-Aire Ins. Co. (MO); CA, CO

DEALERS SERVICE ASSN. RPG (AL): Liability; New World Ins., Ltd. (unk); TN

DESIGN PROFESSIONALS PG (IL): Professional liability; RLI Ins. Co. (IL); CA, DE, HI, TN, TX, VT

DESIGN PROFESSIONALS RISK CONTROL GROUP (CA): Architects & Engineers Professional Liability; Design Professional Ins. Co. (CA); Security Ins. Co. of Hartford (CT); Connecticut Indemnity Co. (CT); CA, CO, DE, HI, TN, TX, VA, VT

DIET CENTER ASSN., INC. (CO): Commercial general liability; Universal Security Ins. Co. (TN); CA, CO, DE, TN, TX

DIRECTORS AND OFFICERS PG, INC. (TX): Directors and Officers Liability For Members; Capital Ins., Ltd. (Barbados); Transatlantic Ins. Co., Ltd. (Barbados); CA

DSN DEALER SERVICE NETWORK, INC. (NJ): Auto Dealer's Warranties; Homestead Ins. Co. (PA); CA, CO, DE, TN, TX, VA, VT

EDP PROF. SERVICES (DE): Errors & omissions; Gulf Ins. Co. (MO); United Natl. Ins. Co. (PA); Homestead Ins. Co. (PA); Voyager Indemnity Ins. Co. (GA); CO, TN, VT

EDUCATORS PURCHASING GROUP ASSN. (IL): Educational services professional liability; Chicago Ins. Co. (IL); CA, CO, DE, HI, TN, TX, VT

ELECTRONIC REALTY ASSOC., INC. PG (MN): Professional Liability for Real Estate Agents & Brokers; Home Ins. Co. (NH); CA, CO, DE, TN, TX, VA

EMERGENCY DEPT. PURCHASING GROUP, INC. (TX): (Formerly known as: Emergency Room PG) Professional liability; United Natl. Ins. Co. (PA); H.S. Weaver's Underwriting Agencies, Ltd. (Eng.); Illinois Ins. Exchange (IL); CA, TX

ENVIRONMENTAL IMPAIRMENT PG, INC. (MO): Pollution liability; Bel-Aire Ins. Co. (MO); CO, DE, TN, VT

ENVIRONMENTAL SERVICES ALLIANCE RISK PG (MS): Liability for members; Insurer unknown; CO, DE, TN, VT

EQUIPMENT LEASING PG, INC. (UT): General liability; Utah Home Fire Ins. Co. (UT); CA, CO, TN

EXPLOSIVES PG (TX): Excess Liability; Nobel Lloyds Ins. Co. (TX); CA, DE, TN, VT

FACTORY/AUTOMOTIVE PG (CA): Commercial General & Automobile; Superior Natl. Ins. Co. (CA); CA

FACTORY/TIRE DEALERS PG (CA): Commercial General & Automobile; Superior Natl. Ins. Co. (CA); CA

FINANCIAL PLANNERS PROFESSIONAL LIABILITY ASSN. (CA): Errors & Omissions for Financial Planners; Clarendon Natl. Ins. Co. (MD); CA, CO, DE, TN, TX, VT

FINE DINING GROUP/SNI PG (CA): Commercial General Liability, Commercial Auto Liability; Superior Natl. Ins. Co. (CA); CA

FIRST AMERICAN PG (TX): Heavy & agricultural equipment dealer warranty reimbursement coverage; First American Ins. Co. (MO); TX

FITNESS TRADE ASSN. RPG (PA): Professional & Commercial general liability for exercise & health clubs, racquet, tennis & toning; General Star Indemnity Co. (CT); CO, DE, TN, VT

FLEET PARKING PURCHASING GROUP SERVICES, INC. (CA): Garagekeeper & general liability; The Canadian Ins. Co. of Calif. (CA); CA

FOSTER PARENT SERVICES, INC. (GA): Liability; Empire Indemnity (OK); VT

FRATERNITY INSURANCE PG, INC. (KY): General Liability for Members; New Hampshire Ins. Co. (NH); CA, CO, TN, TX, VT

GARAGE SERVICES AND AUTO DEALERS LIABILITY ASSN. OF AMERICA (UT): General liability; Homestead Ins. Co. (PA); Southern American Ins. Co. (UT); CO, DE, TN

GROCERS PURCHASING GROUP, INC. (KS): Liability for grocers including products liability; Reliance Ins. Co. (PA); Stonewall Ins. Co. (AL); CO, TN

HAULERS ASSN. OF NORTH AMERICA (TX): Auto liability for aggregate sand & gravel haulers; NGC County Mutual Ins. Co. (TX); TX

HAWAII TRANSPORTATION ASSN. (HI): Auto liability & physical damage, garage & general liability; Clarendon Natl. Ins. Co. (MD); HI

HEALTHCARE PURCHASING GROUP ASSN. (IL): Professional liability; Chicago Ins. Co. (IL); CA, DE, HI, TN, TX, VT

HEALTH CARE PROFESSIONAL PROGRAM (WA): Medical professional liability; The Continental Ins. Co. (NH); CA, HI, TN, TX, VT

HEALTH CARE PROFESSIONS PG ASSN. (IL): Medical Professional Liability; Transamerica Ins. Co. (CA); CA, DE, HI, TN, TX, VA, VT

HEALTH CARE PROVIDERS PG (TX): Professional & general liability for nursing homes; Surplus Underwriters Casualty Ins. Co. (TX); TX

HEALTH CARE PURCHASING GROUP, INC. (TX): Professional & commercial general liability; United Natl. Ins. Co. (PA); H.S. Weaver's Underwriting Agencies, Ltd. (Eng.); Illinois Ins. Exchange (IL); CA, TN, TX

HEALTH INDUSTRY DISTRIBUTORS ASSN. MEMBERSHIP PG (UT): Premises, Products & Professional Liability; Utah Home Fire Ins. Co. (UT); CA, CO, DE, VT

HEALTH PROFESSIONAL PG (IA): Professional Liability; RLI Ins. Co. (IL); CA, CO, DE, HI, TN, TX, VA, VT

HOME CARE ASSN. RISK PG, INC. (VT): Comprehensive General Liability, Excess, Non-Owned and Hire Car Liability for Members; AIU Ins. Co. (NY); CA, CO, TN, VA, VT

HOME FURNISHINGS ASSN. (RI): Furniture Retailers Comprehensive General Liability and Umbrella Liability; Northbrook Property & Casualty Ins. Co. (IL); Scottsdale Ins. Co. (OH); CA, DE

HOMEOWNERS ASSN. RISK RETENTION PG (AZ): General Liability; Exchange Ins. Co. of New York (NY); CA

HORSEMEN OF NO. AMERICA SAFETY CONTROL PG (IL): Horse risks; General Ins. Trieste & Venice (NY); DE, TN, VT

HPBHS PG (TX): Medical malpractice for physicians & a TX hospital; H.S. Weavers (Eng.); Western Indemnity Ins. Co. (TX); Lexington Ins. Co. (Eng.); TX

H.R.S.L. MEMBERSHIP PG (TX): Professional & general liability for nursing homes, retirement centers & similar facilities; Surplus Underwriters Casualty Ins. Co. (TX); TX

***HSPM PG, INC. (IL):** Medical malpractice; Anglo American Ins. Co. Ltd. (Eng.); Illinois Ins. Exchange (IL); Lexington Ins. Co. (MA); Walbrook Ins. Co. Ltd. (Eng.); TX

INDEPENDENT ALARM ASSN. OF AMERICA PG (CA): Commercial General liability and errors & omissions; Nautilus Ins. Co. (AZ); Accessible to producers who are retained by prospective members; CA, CO, DE, HI, TN, TX, VT

INDEPENDENT BROKERS OF AMERICA PG, INC. (MO): Errors & omissions; Bel-Aire Ins. Co. (MO); CO, TN, VT

INDEPENDENT INVESTMENT ADVISORS PG ASSN., INC. (DC): Professional Liability; Insurer Unknown; VT, CA

INDEPENDENT TRUCK OWNERS/OPERATORS ASSOC. PG (MO): Liability; Bel-Aire Ins. Co. (MO); TN, TX, VT

INDEPENDENT TRUCKERS ASSN. GROUP, INC. PG (OR): Liability; Insurer unknown; CA

INDEPENDENT TRUCKERS FED. PG, INC. (OR): Liability for Over-The-Road Trucking Firms; Insurer (Unk.); CA

INSURANCE AGENTS OF AMERICA RISK PG, INC. (TX): Professional liability; Universal Security Ins. Co. (TN); CA, CO, TX

INSURANCE SERVICES PROFESSIONAL PROGRAM (WA): Professional liability; Harbor Ins. Co. (CA); Pacific Ins. Co. (CA); CA, CO, DE, HI, TN, TX, VT

***INTERIOR DESIGNERS PG INC. (DE):** Errors & omissions liability for members; Gulf Ins. Co. (MO);

INTER-LOCKE BEVERAGE GROUP/SNI PG (CA): Commercial General Liability, Commercial Auto Liability; Superior Natl. Ins. Co. (CA); CA

INTERNAL MEDICINE PG OF AMER. (CA): Professional Liability; The Doctors' Co. (CA); CA, CO, HI, VA

INTL. MOUNTAINEERING FEDERATION INC. (CO): Commercial general liability; Universal Security Ins. Co. (TN); CO, TN, VT

INTL. RELOCATORS/TOTAL (PA): Real estate errors & Omissions; Walbrook Ins. Co., Ltd. (UK); Anglo American Ins. Co. (UK); Essex Ins. Co. (DE); Chesapeake Casualty Co. (DE); CA, CO, DE, TN, TX, VT

INTL. SPECIAL EVENTS & RECREATION ASSN., INC. (UT): General Liability for social events & recreational activities; Homestead Ins. Co. (PA); Southern American Ins. Co. (UT); CA, DE, TN, TX, VT

IRMANDADE PORTUGUESE SOCIETY, INC. (CA): General Liability, Liquor Liability for Social Halls; Commercial Acceptance Ins. Co. (Barbados); CA

ISBE INS. PG (IA): Directors & Officers Liability and Company Reimbursement Coverage; No. Atlantic Casualty & Surety Co., Inc. (IN); TN

LAW ENFORCEMENT PROFESSIONAL LIABILITY INS. PG (DC): Law Enforcement Agency Professional Liability; Ins. Co. of the State of Pennsylvania (PA); CO, TN

LAWYERS BENEFIT PG (MO): Lawyers Errors & Omissions; Bel-Aire Ins. Co. (MO); CA, CO, DE, TN, TX, VA, VT

LEISURE PRODUCTS INDUSTRY ASSN., INC. (TX): Product liability for toy manufacturers, sporting goods & leisure products industry; Universal Security Ins. Co. (TN); CO, TN, TX, VT

LESSORS & RENTERS ASSN., INC. (PA): Commercial Auto Liability & Excess; Wheelway Ins. Co. (PA); CA, CO, DE, TN, TX, VA

LIABILITY PG, INC. (OK): Liability for Members for Extended Auto Warranty Contracts; American Lenders Ins. Co. (OK); CO, DE, TN

LIQUOR DEALERS RPG, INC. (AL): Liquor Liability, Commercial general liability; Oxford Indemnity (WY); CA, VT

LONG-HAUL TRUCKING LIABILITY PG (TX): Commercial Liability; Lloyds U.S. (TX); CA, DE, TN, TX, VA, VT

LOWERY/PEST CONTROL PG (CA): Commercial General & Automobile; Superior Natl. Ins. Co. (CA); CA

LUXURY & AUTO RENTAL AUTO PG, INS. (MO): Auto Liability/Limousine; Bel-Aire Ins. Co. (MO); DE, TN, TX, VA, VT

MADISON PURCHASING GROUP (RI): General & excess liability; Reliance Ins. Co. (PA); Royal Indemnity Co. (DE); Federal Ins. Co. (NJ); Fireman's Fund Ins. Co. (CA); CO

MANUFACTURERS AND CONTRACTORS RPG, INC. (TX): All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); DE, TN, VT

MARKETING/MEDIA PROF. SERVICES (DE): Errors & omissions; Gulf Ins. Co. (MO); United Natl. Ins. Co. (PA); Homestead Ins. Co. (PA); Voyager Indemnity Ins. Co. (GA); CO, TN, VT

MECHANICAL INS. PG, INC. (MO): Liability for Auto Vehicle Extended Warranty Contracts; Bel-Aire Ins. Co. (MO); CA, DE, TN, TX, VA, VT

MEDICAL GROUP PURCHASING ASSN. (TN): Medical Professional Liability for Members; Century American Ins. Co. (TN); CA, DE, TN, TX, VA, VT

MEDICAL MALOCCURRENCE PROTECTIVE ASSN. OF AMERICA, INC. (UT): Professional liability; Homestead Ins. Co. (PA); Southern American Ins. Co. (UT); CO, DE, TN, VT

MEDICAL PERSONNEL SERVICES TRUST (TX): General & professional liability for home health care, nurses' registries & similar healthcare personnel services; Surplus Underwriters Casualty Ins. Co. (TX); TX

MEDICAL TRANSPORT SERVICES TRUST (TX): General & professional liability for ambulance & para-transit services & related activities; Surplus Underwriters Casualty Ins. Co. (TX); TX

MMI HEALTHCARE INTERESTS (IL): Hospital Liability; American Continental Ins. Co. (MO); CA, CO, DE, HI, TN, TX, VA, VT

MMI PHYSICIANS INTERESTS (IL): Physicians' Liability; American Continental Ins. Co. (MO); CA, CO, DE, TN, VA

MOTORS INSURANCE PG (MI): Contractual liability for vehicle service contracts; CIM Ins. Corp. (NY); MIC Property & Casualty Ins. Corp. (MI); CO, TN, TX

MS DEALER PG, INC. (MS): Auto service agreement contractual liability; MS Casualty Ins. Co. (MS); TX

MUNICIPAL PG, INC. (TX): Alien/Law Enforcement Officers Liability; Turegum, Walbrook, Ludgate (Eng.); CO, DE, TN, TX, VA, VT

***MUTUAL ASSURANCE PG (WY):** Dealer services contingent liability; Oxford Ins. Co. (WY); TN

MUTUAL ASSURANCE PG, INC. (MO): Contractual Liability; Bel-Aire Ins. Co. (MO); CA, DE, TN, TX, VA, VT

N/S INS. PG, INC. (DE): [aka: Nutri/System Operators PG] General and Professional Liability; Travelers Indemnity Co. (CT); CO, DE, HI, TN, TX, VT

N.A.C.A. PURCHASING GROUP (TX): Liability; Atlantic Mutual Ins. Co. (NY); Atlantic Lloyds Ins. Co. of Texas (TX); TX

NACHC INSURANCE CONSORTIUM PG [NIC] (DC): Professional and general liability; E&O; Frontier Ins. Co. (NY); Evanston Ins. Co. (IL); CO, DE, HI, TN, TX, VT

NALU PG (CA): Errors & Omissions; Transamerica Ins. Co. (CA); CA, DE, HI, TN, TX, VA, VT

NATIONWIDE E.M.T. MALPRACTICE RISK (LA): Professional Liability Malpractice Ins.; The Paradigm Ins. Co. (IN); CA, CO, DE, TN, VT

NATL. AMUSEMENT CORPORATION (MO) (aka: Natl. Amusement PG, Inc. & Natl. Amusement Cooperative): Commercial Liability Waterparks Amusement Industry; Bel-Aire Ins. Co. (MO); CA, DE, TN, TX, VA, VT

NATL. ASSN. FOR AMBULATORY CARE INS. PG (DE): Professional Liability; Reliance Ins. Co. (PA); CA, CO, DE, HI, TN, TX, VT

NATL. ASSN. OF BROADCASTERS (NAB) (DE): Broadcasters Liability; General Ins. Co. of America (WA); CA, CO, DE, TN, TX, VT

NATL. ASSN. OF CAR WASH OWNERS & OPERATORS RISK PG (TX): General liability; Oxford Indemnity Ins. Co. (WY); Laramie Ins. Co. (WY); CA, TX

NATL. ASSN. OF DAY CARE PROVIDERS (CO): Liability for members; Universal Security Ins. Co. (TN); CO, DE, TN, VT

NATL. ASSN. OF EMERGENCY MEDICAL TECHNICIANS, INC. PG (AZ): All liability coverages; AzStar Ins. Co. (AZ); CA, CO, DE, TN, TX

NATL. ASSN. OF HOME INSPECTORS (MN): Errors & Omissions; Atlantic Mutual Cos. (NY); Centennial Ins. Co. (NY); CA, CO, DE, TN, TX, VA, VT

NATL. ASSN. OF HORSE OWNERS & BREEDERS RISK PG (TX): Primary general liability; Oxford Indemnity Ins. Co. (WY); CA, TX

NATL. ASSN. OF INDEPENDENT LIFE BROKERAGE AGENCIES (DC): Errors & Omissions for Life Broker/Agents; Transamerica Ins. Co. (CA); CA, CO, DE, TN, TX, VT

NATL. ASSN. OF INSURANCE AGENTS PG, INC. (CA): Professional liability; Laramie Ins. Co. (WY); CA

***NATL. ASSN. OF MATERIALS HANDLING CONTRACTORS PG (TX):** Material contractors' liability; Laramie Ins. Co. (WY); TX

NATL. ASSN. OF MEDICAL LABORATORIES (PA): Professional liability for medical reference laboratories; Planet Ins. Co. (WI) & other members of the Reliance Group; CA, DE, TN, TX, VT

NATL. ASSN. OF ORTHODONTISTS, A PG (NE): Medical malpractice for orthodontists; Natl. American Ins. Co. (OK); CA, CO, DE, HI, TN, TX

NATL. ASSN. OF PRIVATE SECURITY INDS., INC. PG (TX): Commercial general liability; Security Services Ins. Co., Ltd. (B. West Indies); CA, DE, TN, TX, VA, VT

NATL. ASSN. OF PROF. REAL ESTATE BROKERS (DE): Errors & omissions; Gulf Ins. Co. (MO); United Natl. Ins. Co. (PA); Homestead Ins. Co. (PA); Voyager Indemnity Ins. Co. (GA); TN, VT

NATL. ASSN. OF TOW TRUCK OWNERS & OPERATORS RISK PG (TX): General liability, commercial auto liability; Oxford Indemnity Ins. Co. (WY); CA, TX

NATL. ASSN. OF TRUCK OWNERS & OPERATORS RISK PG (Unk): Liability; Oxford Indemnity Ins. Co. (WY); TX

NATL. ASSN. WHOLESALE DIST. (IL): Product Liability Ins.; Pacific Employers Ins. Co. (CA); CA, CO, DE, VA

NATL. AUTO RENTAL, INC., A PG (LA): Auto & general liability; No. American Indemnity Co. (LA); CA, CO, DE, TN, TX, VT

***NATL. BLOOD RESOURCES PG, INC. (TX):** Liability; Illinois Ins. Exchange (IL); TX

NATL CHIROPRACTIC COUNCIL PG (CA): Professional liability; Pro-Med Intl., Ltd. (Eng.); CA

NATL. CPA LIABILITY RISK PG INC. (Unk): General liability; Euro-American Ins. Co., Ltd. (Turks & Caicos); CA, TX

NATL. CPA RISK PURCHASING GROUP (GA): Accountants professional liability; Commercial Casualty Ins. Co. (GA); CO, DE, TN, VT

NATL. DAY CARE ASSN., INC. (KY): Commercial General and Professional Liability; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

NATL. DAY CARE PROVIDER INS., INC. PG (CA): Bodily Injury & Property Damage Liability; TOPA Ins. Co. (CA); CA, DE, HI, TN, TX, VT

NATL. DENTAL PROFESSIONAL LIABILITY INS. PG & SAFETY GROUP (IA): Professional Errors and Omissions; No. Atlantic Casualty & Surety Co. (IN); CA, DE

NATL. ECONOMIC AND COMMUNITY DEVELOPMENT COUNCIL, INC. (FL): Directors and officers liability; Home Ins. Co. (NH); TN, VT

NATL. FED. OF INS. REGULATORS PG (WY): Insurance Regulators Professional Liability; Lloyds U.S. (TX); CA, DE, TN, VA, VT

NATL. FED. OF PUBLIC ENTITIES (WY): Comprehensive general liability; Great Plains Ins. Co., Inc. (NE); CA, CO, DE, TN, TX, VA, VT

NATL. FED. OF STATE HIGH SCHOOL ASSN. PG (RI): Athletic Liability Ins. For Members; United Intl. Ins. Co. (RI); CA, CO, DE, HI, TN, TX, VA, VT

NATL. FLIGHT PROFESSIONAL PG, INC. (MO): Professional liability; Bel-Aire Ins. Co. (MO); CO, DE, TN, TX

NATL. FOOD PROCESSORS PG (DC): Product Recall and Tampering Liability; California Union Ins. Co. (CA); CA

NATL. HARD GOODS DIST. PG, INC. (KY): Commercial general liability; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

NATL. LAWYERS LIABILITY RISK PG INC. (Unk): Professional liability; Euro-American Ins. Co., Ltd. (Turks & Caicos); CA, TX

NATL. LIMOUSINE ASSN. (DC): Auto & General Liability; Progressive Casualty Ins. Co. (OH); CA, CO, DE, TN, TX, VA, VT

NATL. MANUFACTURED HOUSING INS. PG, INC. (FL): General & product liability; Bankers Ins. Co. (FL); TN

NATL. MARINE TRADES ASSN. (FL): Marina and Related Operators Legal Liability, Comprehensive general liability; 12 Primary Carriers and 15 Excess Carriers; (Heavy orientation to private/pleasure marine industry); CA, CO, VA

NATL. MINING ASSN. PG. INC. (MO): Mining General Liability; Bel-Aire Ins. Co. (MO); CO, TN, VA

NATL. NEWSPAPER ASSN. PG (DC): Newspaper Publishers Liability; General Ins. Co. of America (WA); CA, CO, DE, HI, TN, TX, VT

NATL. NURSES PG ASSN. (IL): Medical Professional Liability; Chicago Ins. Co. (IL); CA, CO, DE, HI, TN, TX, VA, VT

NATL. PURCHASING GROUP (TX): Medical malpractice; Natl. Fire and Marine Ins. Co. (NE); H.S. Weaver's Underwriting Agencies, Ltd. (Eng.); Illinois Ins. Exch. (IL); CA, TX

NATL. REALTY LIABILITY ALLIANCE, INC. (FL): Professional liability for real estate errors & admissions; Lexington Ins. Co. (DE); CA, CO, TX

NATL. REFUSE HAULERS ASSN. (MO): Liability; Bel-Aire Ins. Co. (MO); DE, TN, VT

***NATL. SECURITY GUARD PG (WY):** Security guard errors & omissions; Insurer unknown; CA

NATL. SOCIETY OF DENTAL PRACTITIONERS (MD): Professional Malpractice; Illinois Ins. Exchange/ Britamaco Underwriters, Inc. (IL); CA, CO, DE, TN, TX, VA, VT

NATL. SOFT GOODS DIST. PG, INC. (KY): Commercial General Liability, Products, Completed Operations; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

NATL. TAXI LIABILITY RISK PG INC. (Unk): General liability; Euro-American Ins. Co., Ltd. (Turks & Caicos); CA, TX

NATL. TRUCKING ALLIANCE RISK PG (MS): Liability for members; Insurer unknown; CO, DE, TN, VT

NAU/NACIA AGENTS & ADJUSTERS PG (MN): Errors & Omissions for Crop Ins. Agents and Adjusters; Empire Indemnity Ins. Co. (NE); CA

NIX MEDICAL CENTER PG (TX): Professional liability for TX hospital & physicians on staff; Anglo American Ins. Co. (Eng); Illinois Ins. Exchange (IL); Lexington Ins. Co. (MA); Walbrook Ins. Co. (Eng); Western Indemnity Ins. Co. (TX); TX

NO. AMERICAN ASSN. OF TRADE CONTRACTORS, INC. (MO): Builders & remodelers liability; Bel-Aire Ins. Co. (MO); CO, DE, TN, VT

NO. AMERICAN CHEMICAL USERS & APPLICATORS ASSN., INC. (UT): General Liability; Homestead Ins. Co. (PA); CA, CO, DE, TN, TX, VA, VT

NO. AMERICAN DENTAL PG, INC. (KY) [Previously known as AMERICAN DENTAL PG, INC.]: Professional Liability; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

NO. AMERICAN ELECTRO PLATERS ASSN., INC. (KY): Commercial General Liability, Products, Completed Operations; American Ins. & Indemnity Corp. (KY); CA, DE, TN, VT

NO. AMERICAN HORSEMEN'S PG (KY): (aka: KENTUCKY COUNCIL NO. AMERICAN HORSEMEN'S PG): Commercial General Liability; American Ins. & Indemnity Corp. (KY); CA, DE, HI, VT

***NO. AMERICAN PETROLEUM DISTRIBUTORS PG, INC. (MO):** Pollution liability; Bel-Aire Ins. Co. (MO); CO, TN, VT

NO. AMERICAN RESTAURANT & TAVERN ALLIANCE RISK PG (MS): Liability for members; Insurer unknown; DE, CO, TN, VT

NO. AMERICAN TRAVEL PROFESSIONAL PG (CA): Professional Liability for Travel Agencies and Tour Operators; The Home Ins. Co. (NH); CA, CO, DE, TN, TX, VT

NO. AMERICAN TRUCKERS ASSN., INC. (KY): Truckers Commercial Liability; American Ins. & Indemnity Corp. (KY); CA, DE

NO. AMERICAN TRUCKERS PG, INC. (MO): Auto liability & physical damage; Bel-Aire Ins. Co. (MO); CO, TN, VT

NURSE PRACTITIONER PROFESSIONAL LIABILITY PG, INC. (NY): Professional Liability for Nurse Practitioners; Ins. Co. of the State of PA (PA); CA, CO, TX, VA, VT

NURSES INSURANCE ALLIANCE PG (VA): Professional liability; Scottsdale Ins. Co. (OH); CA

NURSES' PG, INC. (GA): Professional Liability; Insurer unknown; CA, CO, DE, TN, VA, VT

NURSING ORGANIZATIONS PG ASSN. (IL): Medical Professional Liability; Chicago Ins. Co. (IL); CA, DE, HI, TN, TX, VA

NURSING PROFESSION PG ASSN. (IL): Medical Professional Liability; Chicago Ins. Co. (IL); CA, DE, TN, TX, VA

OSS/ACA CAMP OWNERS UMBRELLA PROGRAM (IN): (AKA: Camp Owners Umbrella Program) Umbrella Liability; Chicago Ins. Co. (IL); General Star Natl. Ins. Co. (OH); CA, TN, VA, VT

OSTEOPATHIC PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY ASSN., INC., A PG (AR): Physicians and Surgeons Professional Liability; Clarendon Natl. Ins. Co. (MD); CA, CO, DE, TN, TX, VA, VT

OUM GROUP CHIROPRACTOR PROGRAM (WA): Chiropractor Professional Liability; Harbor Ins. Co. (CA); CA, CO, DE, HI, TN, TX

OUM GROUP PODIATRIST PROGRAM (WA): Podiatrist Professional Liability; Harbor Ins. Co. (CA); CA, CO, DE, HI, TN, TX

OUTFITTERS, GUIDES AND GUEST RANCH PROF. ASSN. PG (CO): Commercial general liability; Universal Security Ins. Co. (TN); CA, CO, TX, VT

OUTPATIENT SERVICE PROVIDERS PATIENT PROTECTION GROUP (CA): [aka: Accord; Outpatient Care Providers Patient Protection Group]: Professional and general liability; Security Trust Ins. Ltd. (B. Virgin Is.); CA, TX

OWNERS, LANDLORDS & TENANTS RPG, INC. (TX): All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); CO, DE, TN, VT

OWNERS-OPERATORS INDEPENDENT DRIVERS ASSN. (MO): Truckers public liability; Natl. American Ins. Co. (MO); Ins. Co. of State of Pa. (NY); CO, DE, TN, TX, VT

PATHOLOGISTS' LIABILITY INS. PG (CA): Professional Liability For Members; The Doctor's Co. (CA); CA, CO, DE, HI, TX, VA, VT

PEST CONTROL OPERATORS INTL. I (UNK): Comprehensive General Liability; Mid-American Indemnity Ins. Co. (Cayman Is.); CA, CO, TN

PEST CONTROL OPERATORS INTL. II (UNK): Comprehensive General Liability; Mid-American Indemnity Ins. Co. (Cayman Is.); CO

PETROLANE RESELLERS OPERATIONS PG (TX): Limited liability for LP Gas Dealers; LPG Risk Retention Group Ins. Co. (TX); CA, CO, DE, TN, TX, VT

PHYSICIANS LIABILITY MANAGEMENT ASSN. (CA): Medical malpractice for doctors & dentists; Southwestern Indemnity & Casualty Ins. Co. (AZ); TX

PHYSICIANS PROFESSIONAL LIABILITY (CA): Medical professional liability for osteopathic physicians; Clarendon Natl. Ins. Co. (MD); CA, CO, DE, TN, TX, VT

PHYSICIANS PURCHASING GROUP, INC. (CO): Medical malpractice liability for members; Summit Home Ins. Co. (MN); CO

PHYSICIANS PURCHASING GROUP OF AMERICA (CA): Professional liability; The Doctors Co. (CA); CA, CO, DE, TN

PIZZA FRANCHISE GROUP/SNI PG (CA): Commercial General Liability; Commercial Auto Liability; Superior Natl. Ins. Co. (CA); CA

PREFERRED HOTEL INSURANCE GROUP, INC. (CA): Commercial general & auto liability; Planet Ins. Co. (WI); Lexington Ins. Co. (DE); Natl. Union Fire Ins. Co. (PA); Niagra Fire Ins. Co. (NY); CO

PREMIER PHYSICIANS FOUNDATION (IL): Physicians professional liability; Premier Alliance Ins. Co. (CA); TX

PRESTONWOOD RISK PURCHASING GROUP (OK): Auto liability; Universal Security Ins. Co. (TN); CA, CO, DE, TN, TX

PRIMARY HEALTH CARE PHYSICIANS PG (CA): Professional liability; Lexington Ins. Co. (MA); H.S. Weaver's Underwriting Agencies, Ltd. (Eng.); Illinois Ins. Exchange (IL); CA, TX

PRODUCT LIABILITY PG, INC. (IN): Product liability; Casualty Assurance Risk Ins. Brokerage Co. (Guam); CO, DE, TN, VT

PROFESSIONAL ASSN. OF LIMOUSINE OPERATORS, INC. PG (CA): Auto liability; Clarendon Natl. Ins. Co. (MD); CA, CO, TX

PROFESSIONAL DESIGN PG ASSN. (IL): Professional liability; Chicago Ins. Co. (IL); CA, CO, DE, TN, TX, VT

PROFESSIONAL ENVIRONMENTAL CONTRACTORS, INC. (PECI) (NJ): General Liability for Asbestos Abatement Contractors; Fidelity Environmental Ins. Co. (NJ); CO, DE, TN, TX, VA, VT

PROFESSIONAL HOME DEMONSTRATORS LIABILITY PROTECTION PG (MO): General liability; Savers Property & Casualty (MO); CO, DE, VT

PROFESSIONAL HUMAN SERVICES, INC. (HI): Professional & general liability for social services agencies; Professional Providers Inc., Ltd. (Barbados); CO, DE, TN, VT

PROFESSIONAL LIABILITY MANAGEMENT ASSN. (CA): Primary and Excess Professional Liability for Physicians and Dentists; Southwestern Indemnity & Casualty Ins. Co. (AZ); CA, CO, DE

PROFESSIONAL NURSING ORGANIZATIONS PG ASSN. (IL): Medical Professional Liability for Members; Transamerican Ins. Co. (CA); CA, DE, HI, TN, TX, VT

PROMOTER'S INSURANCE PG, INC. (GA): Commercial general liability; Connecticut Indemnity (CT); CA, DE, TN, TX, VT

PROPANE GAS PURCHASING GROUP (TX): General liability; Ranger Ins. Co. (DE); CA, CO, DE, TN, TX, VT

***PROTECTION 2000 ASSN., INC. (IL);** Environmental impairment liability; Environmental Protection Insurance Co. RRG (IL); CA, CO, TN, VT

PUBLIC TRANSPORTATION PROVIDERS RISK PG (AL): Liability; American Ins. & Indemnity Corp. (KY); CA, DE, TN, TX, VT

PURCHASING GROUP MANAGERS, INC. (TX): Comprehensive general liability; Universal Security Ins. Co. (TN); CO

RAMADA INTL. ASSN. RISK PG (AZ): General Liability, Auto, Liquor, Hotel; Continental Ins. Co. (NH); CA, DE, TN, VA, VT

RBT RISK PURCHASING GROUP (AL): Liability; Laramie Ins. Co. (WY); CO

READY MIX CONTRACTORS OF TEXAS (TX): General, auto & excess liability for ready mix contractors; American Guardian Ins. Underwriters Lloyds (TX); Gulf Group Lloyds; TX

REAL ESTATE AGENTS PG OF CALIFORNIA (CA): Errors & omissions for real estate agents; Continental Casualty Co. (IL); CA

REAL ESTATE FRANCHISE PG (GA): Professional Liability for Real Estate Agents & Brokers; Home Ins. Co. (NH); CA, CO, DE, HI, TX, VT

REAL ESTATE PROFESSIONALS LIABILITY PG (IA): Professional liability; RLI Ins. Co. (IL); CA

REAL ESTATE PROFESSIONALS RISK PG, INC. (CT): Errors & omissions; Commerce & Industry Ins. Co. (NY); CA, CO, DE, HI, TN, TX

REAL ESTATE PG (UT): Errors & omissions; Utah Home Fire Ins. Co. (UT); DE, TN, VT

REALTY PG ASSN. (IL): Professional liability ins; Chicago Ins. Co. (IL); CA, CO, DE, TN, VA, VT

REALTY WORLD PG (VA): Professional Liability; Home Ins. Co. (NH); CA, CO, DE, TN, TX

RECOVERY AGENTS OF AMERICA, INC. (TX): General & garage liability for recovery agents; Insurer unknown; TX

RECREATIONAL INDUSTRIES ASSN. (UT) [Formerly: ASSN. OF WATER PARK OWNERS & OPERATORS (UT)]: Owners, Landlord & Tenant, Products Water Slides; Associated Intl. Ins. (CA); Utah Home Fire Ins. Co. (UT); CA, CO, DE, TN, VA, VT

RECREATIONAL SPORTS INS. PG (TX): General Liability, Premises, Including Products; Universal Security Ins. Co. (TN); Oxford Indemnity (WY); TN, TX, VT

REPLACE-A-CAR ASSN. (VA): Auto, Bodily Injury & Property Liability for Motor Vehicle Rental Industry; Empire Fire & Marine Ins. Co. (NE); CA, TN, VA, VT

RESIDENTIAL, CARE FACILITIES TRUST (TX): General & professional liability for nursing homes, group homes, half-way houses & similar facilities; Surplus Underwriters Casualty Ins. Co. (TX); TX

RESORT HOTELS INS. GROUP INC. (RHIG) (CA): Comprehensive General Liability and Auto Liability; Planet Ins. Co., (WI); Lexington Ins. Co. (MA); Ins. Co. of St. of Pennsylvania (PA); Niagra Fire Ins. Co. (NY); CO, TN, VT

ROOFING CONTRACTORS GROUP/SNI PG (CA): Commercial General Liability, Commercial Auto Liability; Superior Natl. Ins. Co. (CA); CA

ROOFING CONTRACTORS PG (TX): General Liability for Roofing Contractors; COMCO Ins. Co. (TX); Indemnity Underwriters Ins. (OK); CA, CO, DE, TN, TX

ROOFING CONTRACTORS OF TEXAS (TX): General, auto & excess liability for roofing contractors; American Guardian Ins. Underwriters Lloyds (TX); Gulf Group Lloyds; TX

S.A.M.E., APG (DC): Sexual Abuse Liability; Frontier Ins. Co. (NY); CA, CO, DE, TN, TX, VA, VT

***S.B.A. ACCOUNTANTS RISK PG, INC. (TX):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. ARCHITECTS & ENGINEERS RISK PG, INC. (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. ASSN. CHEMICAL PRODUCTS INDUSTRIES RISK PG, INC. (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. ASSN. CONSTRUCTION INDUSTRIES RISK PG, INC. (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. ASSN. ELEEMOSYNARY INSTITUTION RISK PG (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

S.B.A. ENVIRONMENT IMPAIRMENT RISK PG, INC. (TX): Liability; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. FOOD & BEVERAGE INDUSTRIES RISK PG, INC. (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. INSULATION INDUSTRIES RISK PG, INC. (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. LEGAL SERVICES RISK PG, INC. (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. MEDICAL SERVICES RISK PG, INC. (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

***S.B.A. RECREATION & SPORTS INDUSTRIES RISK PG, INC. (NE):** All liability coverages; American Trust Ins. Co., Ltd. (Turks & Caicos); TX

SCAFFOLDING AND CONTRACTORS RISK PG (AL): General liability; American Ins. & Indemnity Corp. (KY); CA, CO, TN, VT

SELECT ESTABLISHMENT PG, INC. (NY): Restaurant Liquor Liability Exclusively for Restaurants that Honor the American Express Card; Natl. Union Fire Ins. Co. (PA); CA, CO, DE, TN, TX, VT

SFIP PURCHASING GROUP (DC): Comprehensive general liability, auto & umbrella for hotel operators & franchisees; Zurich Ins. Co. (IL); CA, CO, TN

SHORTHAND COURT REPORTERS PG ASSN. (IL): Professional Liability for Court Reporters; Chicago Ins. Co. (IL); CA, CO, DE, HI, TN, TX, VT

SIGN MANUFACTURERS GROUP/SNI PG (CA): Commercial General Liability, Commercial Auto Liability; Superior Natl. Ins. Co. (CA); CA

SKI RENTAL ASSN., INC. (CO): Commercial general liability; Universal Security Ins. Co. (TN); CA, CO

SNI/BUILDING MATERIALS PG (CA): Commercial General & Automobile Liability; Superior Natl. Ins. Co. (CA); CA

SNI/CONVALESCENT PG (CA): Commercial General & Automobile Liability; Superior Natl. Ins. Co. (CA); CA

SOLID WASTE MANAGEMENT GROUP/SNI PG (CA): Commercial General Liability, Commercial Auto Liability; Superior Natl. Ins. Co. (CA); CA

SPECTATOR LIABILITY PG ASSN. (IL): Excess and umbrella liability coverage for events involving spectator liability; Chicago Ins. Co. (IL); CA, CO, VT

SPECTATOR LIABILITY RISK PG (AL): General liability; American Ins. & Indemnity Corp. (KY); CA, VT

SPORTS RISK PG (RI): Athletic Liability Ins. For Members; United Intl. Ins. Co. (RI); CA, CO, DE, TN, TX

STRUCTURAL ENGINEERS RISK MANAGEMENT COUNCIL PG (CA): Architects & Engineers professional liability; Design Professionals Ins. Co. (CA); Security Ins. Co. of Hartford (CT); Connecticut Indemnity Co. (CT); CA, CO, DE, HI, TN, TX, VT,

SUPERDEALER INSURANCE PG (LA): Garage liability, comprehensive general liability, umbrella liability; Natl. Union Fire Ins. Co. (PA); CO, DE, TN

SWEEPS RISK PURCHASING GROUP, INC. (CT): Comprehensive general liability; Chicago Ins. Co. (IL); CA, CO, DE, TN

TAXI OWNERS & OPERATORS ASSN., INC. (TX): Commercial auto; Universal Security Ins. Co. (TN); CO, TN, TX, VT

TEXAS CLASSROOM TEACHERS ASSN. (TX): Professional liability for members; General American Fidelity & Guaranty Corp. (TX); TX

TEXAS ASSN. OF COMMUNITY HEALTH CENTERS PG, INC. (TX): Professional & general liability, non-owned auto for community health centers in TX only; Paradigm Ins. Co. (KY); TX

TEXAS ASSN. OF SECONDARY SCHOOL PRINCIPALS (TX): Liability; General American Fidelity & Guaranty Corp. (TX); TX

THE UGLY DUCKLING RENT-A-CAR SYSTEMS (AZ): Commercial Automobile; No. American Indemnity Co. (LA); CA, CO, DE, TN, TX, VA, VT

TITLE AGENTS OF AMERICA RISK PG (AZ): Professional Liability; No. Atlantic Casualty & Surety Co. (IN); Universal Security Ins. Co. (TN); CA, CO, HI, TN, TX, VA

TOWING & RECOVERY ASSN. OF AMERICA INS. GROUP, INC. (LA): Automobile Liability for Towing Operations; Ranger Ins. Co. (TX); CO, DE, HI, TN, TX, VT

TRI-STAR ASSN. PG (CA): Commercial Comprehensive General Liability; Watts & Co. (KY); CA

TRUCK DRIVING SCHOOLS OF AMERICA (unk): Truck liability; Insurer unknown; CA

TRUCKER ASSN. RISK PG, INC. (GA): Non-trucking use liability; Universal Security Ins. Co. (TN); CO, TN

***TRUCKERS COALITION OF AMERICA (WY):** Liability for sand & gravel haulers, refuse haulers & tow trucks; Oxford Indemnity Ins. Co. (WY); TN

TRUST FOR INSURING EDUCATORS PG (MO): Educators' Professional Liability; Savers Property & Casualty Ins. Co. (MO); CA, CO, DE, HI, TN, VA, VT

UNDERGROUND TANK OWNERS POLLUTION LIABILITY INS. ASSN. (UTOPIA) (TX): Comprehensive general liability; Mid-American Indemnity Ins. Co. (Cayman Is.); CA, CO, TN, TX, VT

U.S. AUTOMOBILE WARRANTY ASSN. (CO): Auto mechanical breakdown insurance; Universal Security Ins. Co. (TN); Great Plains Ins. Co. (NE); CO, TN

U.S. EQINE BUSINESS FEDERATION, INC. (CO): Commercial general liability; Universal Security Ins. Co. (TN); CA, CO, TN, VT

U.S. MILITARY FAMILY DAY CARE HOME PG (AZ): Owners, landlords, tenants and supplemental accident policy (OH); CA, CO, DE, HI, TN, TX, VT

U.S. PEST CONTROL ASSN. PG (MS): Commercial General Liability; Protective Casualty Ins. Co. (MO); CA, CO, DE, TN, TX

U.S. ROOFING CONTRACTOR PG (TX): Liability for Roofing Contractors; Acceptance Ins. Co. (NE); CA, CO, TN, TX

U.S. SCAFFOLD AND LADDER ASSN., INC. (MI): Casualty for members; First Security Casualty Co. (MI); CO, DE, TN

UNITED FOOD DELIVERY ASSN., INC. (CO): Commercial general liability; Universal Security Ins. Co. (TN); CO, DE, TN, TX

UNITED HEALTH CENTERS ASSN., INC. (MO): Commercial General Liability; Bel-Aire Ins. Co. (MO); CA, DE, TN, VT

UNITED LIMOUSINE ASSN., INC. (TX): Liability; Insurer unknown; TX

UNITED PROFESSIONAL LIABILITY PG, INC. (TX): Professional liability for social workers, therapists & related areas; Texas Ins. Co. (TX); TX

UNITED SECURITY ASSN. (TX): Commercial Liability for Members; Universal Security Agency (TX); IMBI, Ltd. (Cayman Is.) and other carriers; CA, CO, DE, TN, TX, VA, VT

UNITED PROFESSIONAL LIABILITY PG, INC. (TX): General and professional liability, auto liability to health care orgs. and professionals; Texas Ins. Co. (TX); CO, DE, HI, TN, VT

UNITED VAN LINES RISK PG (MO): General Liability, Warehousemen, Umbrella, Auto, Garage; Vanliner Ins. Co. (AZ); CA, DE, VA, VT

USL PG ASSN (IL): Directors & Officers for Savings Institutions; Virginia Surety Co., Inc. (IL); CA, DE, TN, VA, VT

WATER RECLAMATION ASSN/SNI PG (CA): Commercial General Liability, Commercial Auto Liability; Superior Natl. Ins. Co. (CA); CA

WESTERN ELEVATOR SAFETY ASSN. PG (CA): Commercial General Liability for Elevator Trade; Illinois Ins. Exch. (TRANSCO) (IL); Constitution State Ins. Co. (CT); CA, CO

WESTERN CONTINENT REALTY LIABILITY ASSN., INC. (UT) [Previously known as: Western World Realtors Liability Assn., Inc. (UT)]: General Liability for Realtors; Homestead Ins. Co. (PA); Southern American Ins. Co. (UT); CA, CO, DE, TN, VA, VT

WORLDWIDE OUTFITTER & GUIDES ASSN. (UT): General Liab. & Commercial Auto Outfitters & Guides; Homestead Ins. Co (PA); Southern American Ins. Co. (UT); CA, CO, DE, TN, TX, VA, VT

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No. 89-837

In The

Supreme Court of the United States

October Term, 1989

SWANCO INSURANCE COMPANY-ARIZONA,

Petitioner,

v.

WILLIAM D. HAGER
Commissioner of Insurance of the State of Iowa,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION

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STATEMENT OF THE CASE

The Commissioner has no disagreement with the scope or accuracy of Swanco's statement of the case except in the following regard.

The assertion that purchasing groups are "legal entities", Petition for Writ of Certiorari at 7, is not necessarily correct. Frequently, purchasing groups are not incorporated. Pet. App. at 13b. Even though apparently allowed under the federal Liability Risk Retention Act, (15 U.S.C. §§ 3901-06) [hereafter, the "Act"], an unincorporated purchasing group would not be treated as a corporate entity for diversity purposes. *See generally United Steelworkers of America v. R. H. Bouligny*, 382 U.S. 145 (1965) (unincorporated association a "citizen" wherever it has members). Its status as a "legal entity" is thus questionable.

REASONS FOR DENIAL OF THE PETITION

1. Given That The State Law Issue Was Separate And Distinct From The Federal Statutory Issue And Could Not Have Formed a Basis For The Decision By The Eighth Circuit Because Of The Eleventh Amendment To The United States Constitution In Any Event, The Eighth Circuit Properly Refused To Consider It.

The only question before the lower courts was "whether, *consistent with the [federal] Act*, the State of Iowa may require an insurance company providing coverage to a purchasing group domiciled in another state but having members in Iowa to be licensed in Iowa". (Emphasis added). Pet. App. at 2a. The legal authority of Iowa to

require licensure of Swanco is entirely separate from the question of whether it does in fact. Thus the principle that a change in law during an appeal will govern the result is inapplicable because the change in law does not affect the issue in the case. Rather, the Eighth Circuit properly applied the well established principle that consideration will ordinarily not be given to issues raised for the first time on appeal. *See Hormel v. Helvering*, 312 U.S. 552, 556 (1941).

The issue posed by § 515E.9 (Pet. App. E) is not even relevant to the meaning of the Act. Section 515E.9 is a product not of Congress but of the Iowa legislature. It is based upon a model Act promulgated by the National Association of Insurance Commissioners (Res. App. at 1a). It is not an enactment of Congress. The Iowa legislature has less the status of an administering federal agency, such as the United States Department of Commerce, for purposes of deference to statutory construction.[1]

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[1] The position taken by the Commissioner in the Eighth Circuit was that § 515E.9(4) is referring only to regular admission, as opposed to surplus lines, and thus is not inconsistent with the state imposing at least a surplus lines requirement on a purchasing group insurer. Under this interpretation, if the insurer does not utilize the option of regular admission but instead opts for surplus lines licensure, it must disclose to its policyholders the fact that there is no guaranty coverage. In the jargon of insurance regulators, "admission", or "admitted", frequently refer only to regularly admitted companies; indeed, under Iowa law, surplus lines insurers are referred to as "unauthorized", Iowa Code § 515.147 (1989). Based as it is on a model statute by the National Association of Insurance Commissioners, § 515E.9(4) could hardly have been intended to be given a preclusive effect toward non-domiciliary licensing.

Further, the lower federal court simply could not have based its decision on the § 515E.9 issue. Under the Eleventh Amendment to the United States Constitution, a federal court cannot grant even affirmative (including declaratory) relief against a state official based on a violation of *state* law. *See Pennhurst State School and Hosp. v. Halderman*, 465 U.S. 89, 106 (1984); *Central Reserve Life of North America Ins. Co. v. Struve*, 852 F.2d 1158, 1161 (9th Cir. 1988). The lower court was jurisdictionally precluded from entertaining the § 515E.9 issue and basing any relief thereon.

2. The Eighth Circuit Correctly Found That The Federal Act Does Not Preempt Non-domiciliary Licensing Of A Purchasing Group Insurer.

One must begin, as the Eighth Circuit recognized, with the "well established presumption against imputing to Congress an intention to preempt an area that traditionally has been left to state regulation [such as insurance by virtue of the McCarran Act]". Pet. App. at 8a, *citing Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); *see also Metropolitan Life Ins. Co. v. Mass.*, 471 U.S. 724 (1985).

Nothing in the language of the Act preempts the requirement of licensure by non-domiciliary states of a purchasing group's insurer.

The Act eschews a comprehensive federal regulatory scheme. *See Home Warranty Corp. v. Caldwell*, 777 F.2d 1455, 1471-72 (11th Cir. 1985), *cert. denied*, 479 U.S. 852 (1986). Instead, it creates two different alternatives to conventional insurance: risk retention groups, which are self-insurance pools, and purchasing groups, which are

vehicles for the group purchase of property/casualty insurance, an option frequently not available under state law in the absence of the federal Act. Only as to risk retention groups is licensing limited to a single state. 15 U.S.C. § 3902(a)(1).

The preemption schemes for the two alternative insurance mechanisms are entirely different, as the Second Circuit Court of Appeals found in *Insurance Co. of State of Pennsylvania v. Corcoran*, 850 F.2d 88, 91 (2nd Cir. 1988) (non-domiciliary state could subject purchasing group's insurer's rates and forms to its review and approval). The result is a profoundly different treatment of state laws affecting risk retention and purchasing groups:

> [I]n light of § 4(a)'s [15 U.S.C. § 3903(a)] express preemption of specific state laws, application of the principle of *expressio unius est exclusio alterius* leads directly to the conclusion that *state regulation not expressly mentioned in § 4(a) remains in force.*

Id. (emphasis added); *see also* H.R. Rep. No. 865, 99th Cong., 2d Sess. at 19 *reprinted in* U.S. Code Cong. & Admin. News 5303, 5316; 15 U.S.C. § 3903(g). Since § 3903(a) does not include it in its list of proscriptions, state licensing of a purchasing group insurer is permissible.

Compliance with a non-domiciliary licensure requirement is not a physical impossibility. As construed by the Eighth Circuit, the Act requires licensing in one state;

other states may also require licensure but it is not physically impossible to obtain more than one license.[2]

A non-domiciliary licensing requirement does not stand as an obstacle to the execution of the Act. Swanco overstates the importance of the goal of the Act of increased availability of insurance coverage. The Eighth Circuit properly read the Act as Congress disavowing availability as its *only* purpose. This is particularly so as to purchasing groups. A considerable degree of regulatory leeway remains in the states and a balance between availability and regulation was struck.

The regulatory significance of state-by-state licensing is that it triggers the release of financial information to non-domiciliary states and allows them to police the financial condition of an insurer selling within their borders. Without licensing, the insurance-buying public and regulators of those states cannot readily determine the financial condition of an insurer selling insurance within their borders. Nor can it always be assumed that the domiciliary state possesses the willingness to protect the

---

[2] Section 3903(f) is simply not the exclusive provision relating to licensing. While Respondent prefers the interpretation of that section adopted by the district court – the "location" issue – the Eighth Circuit is correct that its § 3903(f) analysis does not end the inquiry. Section 3903(f) merely creates a minimum one-state licensing requirement. This leaves non-domiciliary states free to enforce their licensing laws and regulations to the extent they are consistent with § 3903(a)'s restrictions, such as prohibiting discrimination by a state against a group or its insurer.

residents of other states. (The insurer may have very little or no premium volume in the domiciliary state.) Contrary to Swanco's assertion, Congress did not intend to frustrate the states' regulatory powers in this regard by opting for the one-state-of-regulation approach it took for risk retention groups.

> "Congress selected particularized means to [the end of increasing the availability of liability insurance] in conscious recognition that a considerable degree of state regulation would remain."

Corcoran, 850 F.2d at 92-93.

Congressional debate indicates that adequacy of regulatory safeguards was of concern to the enacting body:

> "[A] number of witnesses at the hearing on this legislation raised concerns regarding the scope of the legislation and the need to assure that insurance regulators in *nonchartering states* have sufficient authority with respect to fraudulent practices by risk retention groups and *purchasing groups*, improper sales to the general public by such groups, and the financial condition of such groups." 132 Cong. Rec. S 9229 (1986) (Remarks of Sen. Kasten).

The alarming increase in insurer insolvencies in recent years was brought to the attention of Congress. 132 Cong. Rec. S 9241 (1986). Interestingly, a significant number of the purchasing group insurers listed in Appendix F to the petition are either unlisted or not assigned a rating by *Best's Insurance Reports (Property-Casualty ed.)* (1989), the authoritative publication on insurer financial condition.

Any burden to insurers created by licensure is overshadowed by paramount regulatory concerns. As this

Court has recognized, the insurance business has long been subject to intense regulation. *See generally Robertson v. California*, 328 U.S. 440, 456 (1946). The burden of licensing is lessened somewhat by the ease of meeting surplus lines requirements. Pet. App. at 5a n.4. Moreover, as the Eighth Circuit noted,

> "Allowing nondomiciliary states to enforce their licensing and regulatory laws not preempted by § 4(a) burdens an insurer of a purchasing group no more than any other insurer desiring to market its policies in several states." (Pet. App. at 13a n.10).

3. There Is No Split In The Circuits.

Indeed, one lower federal court has followed the Eighth Circuit's decision upholding non-domiciliary licensing. *See Florida v. Nat'l Amusement Purchasing Group, Inc.*, No. TCA-40215-WS (N.D. Fla. Oct 5, 1989). (Res. App. at A-2).

4. Swanco's Forum For Its Complaints About The Burden of Non-domiciliary Licensing Requirements Is Congress, Not The Judiciary.

Congress has resolved the competing policy considerations behind the federal statutory issue. If Swanco is unhappy with that resolution it must address its concerns to Congress.

Policy issues are very much in dispute. Respondent questions whether purchasing groups are indeed the spontaneous product of the need of a defined group, such as a trade or business organization, for hard-to-obtain

liability insurance coverage or, rather, whether many are merely marketing devices which are the creation of insurers not licensed in many states who wish to utilize Swanco's construction of the Act to avoid it. The lack of any chartering requirement for purchasing groups permits marketers to use the Act in a manner unintended by Congress. The states should remain free to devise appropriate regulation of purchasing group insurers.

CONCLUSION

The Court should deny the petition for a writ of certiorari. None of the criteria in Sup. Ct. R. 17 have been met. The Eighth Circuit's decision is not in conflict with applicable decisions of this Court. It is not in conflict with those of another Circuit. Nor is there any reason why this Court, rather than Congress, should address the policy concerns raised by the Petition.

Respectfully Submitted,

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Section 9. Restrictions on Insurance Purchased by Purchasing Groups

A. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

B. A purchasing group which obtains liability from an insurer not admitted in this state or a risk retention group shall inform each of the members of such group which have a risk resident or located in this state that such risk is not protected by an insurance insolvency guaranty fund in this state, and that such risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

C. No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

D. Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

STATE OF FLORIDA,
DEPARTMENT
OF INSURANCE,

Plaintiff,

v. TCA 87-40215-WS

NATIONAL AMUSEMENT PURCHASING GROUP, INC.; RISK RETENTION SERVICE CORPORATION; BEL-AIRE INSURANCE COMPANY; Missouri corporations,

ORDER

Defendants.

On October 14, 1987, the court conducted a hearing upon plaintiff's motion for a preliminary injunction. *See* document 4. By agreement of the parties, trial of the action was advanced and consolidated with the preliminary injunction hearing as authorized by Federal Rule of Civil Procedure 65(a)(2). The court stated at the conclusion of the hearing that there was no need for a preliminary injunction because the matter was ready to take under advisement for final decision. That decision, long overdue, is now embodied in this order.

This case turns upon the court's construction of the Product Liability Risk Retention Act of 1981 (the "Act"), as amended by the Liability Risk Retention Act of 1986, 15 U.S.C. §§ 3901-3906 (1982 & Supp. V 1987). Such Act authorizes persons and businesses with similar or related liability exposure to purchase liability insurance on a group basis through purchasing groups or to self-insure

through insurance cooperatives called risk retention groups. 15 U.S.C. § 3901(a)(4), (5). Aimed at reducing the cost and increasing the availability of commercial liability insurance, the Act expressly preempts state laws which make purchasing and risk retention groups illegal.

One of the defendants in this case, National Amusement Purchasing Group, Inc. ("National Amusment"), is a purchasing group formed pursuant to section 2(a)(5) of the Act. A purchasing group is defined under the Act as any group which

> (A) has as one of its purposes the purchase of liability insurance on a group basis;
>
> (B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);
>
> (C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
>
> (D) is domiciled in any State.

15 U.S.C. §3901(a)(5). A Missouri corporation whose members include several Florida businesses, National Amusement purchased insurance coverage for its members from defendant Bel-Aire Insurance Company, a Missouri insurer authorized by the Missouri Division of Insurance to sell insurance in Missouri. Defendant Risk Retention Service Corporation (RRSC) is also a Missouri corporation, allegedly formed to service risk purchasing groups such as National Amusement.

On April 10, 1987, through RRSC, National Amusement sent notice to plaintiff in this case, the State of Florida, Department of Insurance (the "department"), that it planned to offer liability coverage to businesses located in Florida, through policies issued by Bel-Aire. Plaintiff responded by filing suit on August 27, 1987, seeking declaratory and injunctive relief from defendants' alleged violations of the insurance laws of Florida. Plaintiff contends that, pursuant to section 627.949 of the Florida Statutes, a purchasing group may purchase insurance or coverage on a risk located in Florida only from: (1) a risk retention group that is certificated or licensed in one of the states of the United States; (2) an authorized insurer; or (3) an eligible surplus lines insurer. Because Bel-Aire is none of the three, plaintiff argues that all three defendants are, or have been, transacting the business of insurance in Florida in noncompliance with applicable provisions of the Florida Insurance Code. Defendants argue in response that the federal Liability Risk Retention Act preempts the state laws cited by plaintiff, thus exempting defendants from any Florida law that would otherwise prevent the activities at issue here.

DISCUSSION

Under Florida law, with limited exceptions, persons who transact the business of insurance in Florida must have a certificate of authority issued by the Department of Insurance. § 624.401(1). Any unauthorized insurer transacting the business of insurance in Florida is subject to liability for a civil penalty of not more than $1,000 for each nonwillful violation or not more than $10,000 for each willful violation. § 626.910. In addition, any person

who represents or aids an unauthorized insurer may be subjected to criminal liability. § 626.902(1). The most notable exception to the certificate of authority requirement is that permitting the lawful transaction of surplus lines insurance, defined as insurance not procurable from an authorized insurer. § 624.402. Although the surplus lines insurer need not have a certificate of authority, he must be approved by the department, and the insurance written must be placed only by or through a licensed Florida surplus lines agent. § 626.915. Importantly, each surplus lines policy must carry a warning that the insurer is not licensed by the State of Florida and that the protection provided by the Florida Insurance Guaranty Act does not apply. § 626.924.

The Liability Risk Retention Act has created another category of insurer which may legally transact insurance business within Florida – the risk retention group. *See* Fla. Stat. § 624.11(2) (risk retention groups, organized under the provisions of the Act and properly licensed and authorized in an appropriate jurisdiction, may transact insurance in Florida, subject to selected provisions of the Florida Insurance Code). Under the Act, persons or businesses with similar types of risk may form and own their own insurance company to insure against their liability exposures. 15 U.S.C. § 3901(4). Chartered in the group's state of domicile, the risk retention group is regulated primarily by the domiciliary state. The authority of non-domiciliary states to license and regulate risk retention groups is largely preempted. In sweeping preemption language, the Act provides in section 3(a)(1) that "a risk

retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would . . . make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group." 15 U.S.C. § 3902(a)(1). Specific exceptions to this broad preemption are enumerated in subsequent subsections. *See* 15 U.S.C. §3902(a)(1)(A)-(I). Notably, non-domiciliary states are permitted to: (1) tax business written by a risk retention group in such state; (2) require compliance with the state's unfair claims and deceptive trade practices laws; (3) require notice on policies issued by a risk retention group that the non-domiciliary state's insurance laws do not apply and state insurance insolvency guaranty funds are not available; and (4) subject the group, under some circumstances, to an examination by the state insurance commissioner as to the group's financial condition. In sum, with respect to risk retention groups, Congress carefully crafted a scheme which, on the one hand, provides for broad preemption of a non-domiciliary state's licensing and regulatory laws but which, on the other hand, explicitly preserves for those states several very important powers.

In addition to risk retention groups, the Act recognizes a separate alternative to traditional insurance – purchasing groups. For these groups, section 4 of the Act provides a separate and very different preemption scheme. Unlike the risk retention section which broadly preempts state law while enumerating specific laws that states may enforce, the section pertaining to purchasing groups expressly preempts a limited number of specific

state laws while also providing that "[n]othing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter." 15 U.S.C. § 3903(g). As noted in the House Report on the 1986 amendments to the Act:

> In enacting the 1981 Act, it was recognized that there were a number of identifiable kinds of State laws that prevented the establishment and functioning of purchasing groups. Those laws were listed in Section 4(a) of the 1981 Act and it is those laws that are preempted. Subject to the prohibition on discrimination against purchasing groups, the states remained able to apply all their other laws to purchasing groups and those dealing with such groups. This approach is carried forward into the 1986 Act. Therefore the Committee did not consider it necessary to itemize all the other laws to which purchasing groups remain subject.

H.R.Rep. No. 865, 99th Cong., 2d Sess. 19, *reprinted in* 1986 U.S.Code Cong. & Admin. News 5316. In other words, both the language and the history of the Act suggest that Congress intended there to be limited preemption of state laws relative to purchasing groups.

Notwithstanding such suggestion, defendants in this case argue that section 4 of the Act was intended to effect a complete preemption of state licensing laws, including those prohibitions against the unauthorized transaction of insurance business. In essence, defendants would have this court recognize a fourth category of insurer which may lawfully transact insurance in Florida, an insurer which is neither licensed in the state, nor approved as a

surplus lines insurer in the state, nor registered as a risk retention group in the state.

In support of their argument, defendants first point to sections 4(a)(2) and (3) of the Act. Section 4(a) preempts:

> any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would –
>
> . . .
>
> (2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;
>
> (3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

15 U.S.C. § 3903(a)(2), (3). Defendants contend that the Florida statute relied upon by the department in this case, if enforced, would make it unlawful for Bel-Aire to provide, and National Amusement to purchase, insurance which affords advantages based on the group's loss and expense experience. Thus, defendants conclude that the plain terms of the statute exempt Bel-Aire and National Amusement from the state licensing laws. Further, defendants say that section 4(f) of the Act confirms that the state law at issue here is preempted. That section provides that "[a] purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located." 15 U.S.C.

§ 3903(f). Assuming that the Act uses the word "located" to refer to the purchasing group's domiciliary state, defendants reason that because section 4(f) states that a purchasing group may not purchase from an insurer not admitted to the state in which the purchasing group is located, the insurer need *only* be admitted to that state and need not be admitted or otherwise qualified elsewhere. Indeed, defendants suggest that section 4(f) would be superfluous if it were given any other construction.

The court is unable to agree with defendants' construction of the Act. Although convinced that defendants correctly analyze the meaning of the term "located" in Section 4(f), *see Swanco Insurance Co. – Arizona v. Hager*, 879 F.2d 353 (8th Cir. 1989)(section 4(f) refers to the single state in which the purchasing group is domiciled), the court rejects the argument that the Act exempts insurers of purchasing groups from the licensing and regulatory laws of nondomiciliary states. Neither section 4(f) nor sections 4(a)(2) and (3) can be read so broadly. Section 4(a)(2) expressly preempts only those state laws that prohibit insurers from offering purchasing groups "advantages, based on their loss and expense experience." 15 U.S.C. § 3903(a)(2). Section 4(a)(3) preempts only those state laws which prohibit purchasing groups from purchasing insurance which reflects such advantages. Neither section purports to exempt purchasing group insurers from being licensed or otherwise authorized in the state where a purchasing group member resides. While it may be correct to say that preemption of Florida's licensing law would enhance the ability of purchasing groups to operate, there is not one section in the

limited list of preempted laws that explicitly preempts a state's licensing laws as they apply to purchasing groups. There is little doubt that a nondomiciliary state's licensing laws, if applicable to purchasing group insurers, would burden the ability of insurers to offer purchasing groups advantages based on their loss and expense experience. Indeed, the same could be said of many other types of insurance regulations. Congress did not include within its list of preempted laws, however, a section prohibiting laws and regulations which burden the ability of purchasing groups to operate. Congress clearly could have provided for such preemption. Instead, Congress chose to specifically preempt a limited number of state laws affecting purchasing groups, when it simultaneously and in the same Act preempted in broad terms all but a limited number of state laws affecting risk retention groups. Given Congress's choice, this court cannot accept the interpretation defendants ask the court to adopt.

Section 4(f) does not convince the court otherwise. Section 4(f) provides that a purchasing group may not purchase from an insurer not admitted to the state in which the purchasing group is located. It does not provide, as defendants suggest, that a nondomiciliary state is prohibited from requiring an insurer to comply with its licensing requirements before insuring a risk located in that state. Again, the court declines to read into a statute that was carefully crafted, a prohibition that was not clearly and explicitly included by Congress.

To support their position, defendants call the court's attention to an excerpt from the *Liability Risk Retention Act of 1986: Implementation Report* prepared by the United States Department of Commerce in September of 1987.

Although the Department of Commerce is not charged with administering the Act, Congress mandated the preparation of this report to address the implementation of the Liability Risk Retention Act of 1986. With respect to purchasing groups, the Secretary of Commerce concluded that "the Act is not working as well as intended and that some modification of the Act is necessary if it is to serve its purposes more effectively." *Report* at ES-6. More specifically, the Secretary stated that:

> [t]he basic problem regarding purchasing groups is whether purchasing groups and their insurers are subject to multi-state or single state regulation. The Act is unclear on this issue and the states have differed in their interpretation with some states concluding that every state in which a purchasing group has members has regulatory authority while others believe that such authority lies solely with the state in which the purchasing group is domiciled or has its principal place of business.

Report at ES-3. While recognizing, on the one hand, that state regulators are justifiably concerned that they lack sufficient information about purchasing group insurers to be able to prevent financial and other commercial abuses, the Secretary was concerned, on the other hand, that imposition of multiple states' regulatory requirements would be burdensome to the point of making it virtually impossible for purchasing groups to operate. Cognizant of the dilemma, the Secretary recommended solutions which would reduce regulatory burdens on the insurers of purchasing groups and, at the same time, increase the ability of state regulators to protect the public from unsound financial practices and commercial abuses. In

essence, the Secretary recommended that purchasing groups be treated more like risk retention groups.

Defendants want the court to take judicial notice of the report prepared by the Department of Commerce. They state:

> The report analyzes the language, purpose and legislative history of 15 U.S.C.A. § 3903, concludes that the Act preempts state laws such as that relied upon by the Florida Department here, and concludes further that the congressional purpose will be defeated if such laws are enforced. The Department of Commerce analysis is correct and should be followed.

See document 21, pp. 2-3. While the court agrees that the report suggests that congressional purpose will be defeated if multiple states' licensing and regulatory laws are enforced, the court cannot agree that the report states that the Act, as written, actually preempts state laws such as that relied upon by the Florida Department here. Further, even if the court could so agree, the interpretation of the Department of Commerce – an agency charged *not* with the administration or implementation of the Act but with *reporting* on how the Act was being implemented by the states – would not be entitled to deference. *See Swanco*, 879 F.2d at 358 (where the Commerce Department is not charged with administering the Act, but merely has responsibility under the Act to report on its implementation, deference is not warranted). Eleventh Circuit law does not hold to the contrary. Thus, while the report may provide valuable information and insight concerning the Act, it does not convince this court that the statute preempts the Florida licensing statutes at issue in this case.

The court is aware of only two circuit courts that have addressed the same or a related issue concerning the Act. Both cases support this court's refusal to broadly construe the preemptions contained in section 4 of the Act. In *Swanco Insurance Company – Arizona v. Hager*, 879 F.2d 353 (8th Cir. 1989), when faced with the question of whether the state of Iowa could impose its licensing requirements upon an Arizona insurance company providing coverage to a purchasing group domiciled in Arizona but having members in Iowa, the Eighth Circuit concluded that both the language and the structure of the Act supported the position that neither section 4(f) nor any other section of the Act preempts a nondomiciliary state from imposing its licensing requirements upon insurers who wish to sell to purchasing group members in that state. In *Insurance Company of the State of Pennsylvania v. Corcoran*, 850 F.2d 88 (2d Cir. 1988), the Second Circuit considered the somewhat different but related question of whether the express preemption provisions of section 4(a) could be broadly construed to prohibit a state from applying its policy-form and rate regulations to purchasing groups. An analysis of the legislative history and the structure of the Act – including, and especially, the differing schemes provided for risk retention and purchasing groups – led the court to conclude that only those state laws and regulations clearly and explicitly designated in section 4 are preempted. Both cases thus support the conclusion that Florida's licensing laws are not preempted because such laws are not included in the *specific* state laws exempted under the Act.

CONCLUSION

Having considered the record before it, and for the reasons discussed above, the court has determined that (1) the Liability Risk Retention Act does not preempt the state licensing laws that are at issue in this case, and (2) plaintiff is entitled to a permanent injunction, enjoining defendants from further violations of such laws. Although it is premature to rule on plaintiff's claims for civil penalties, the court finds that there is no just reason for delay of final judgment as to plaintiff's claims for declaratory and injunctive relief. Accordingly, it is ORDERED:

1. It is DECLARED that sections 627.949, 624.401(1), 627.918, and 626.901(1) of the Florida Statutes are not preempted by the Product Liability Risk Retention Act of 1981, as amended by the Liability Risk Retention Act of 1986, 15 U.S.C. §§ 3901-3906.

2. Defendants are hereby PERMANENTLY ENJOINED from soliciting or transacting, or aiding the transaction of, the business of insurance in Florida in violation of the above statutes.

3. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk of the Court shall enter final judgment accordingly.

4. This court shall retain jurisdiction over this case with respect to all remaining issues, claims and relief.

DONE AND ORDERED this 5th day of October 1989.

/s/ William Stafford
WILLIAM STAFFORD
CHIEF JUDGE